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RECORD, CASE No. 13,911.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 281. 50

AGUSTUS R. GUMAER AND THE FLORENCE OIL COMPANY, APPELLANTS,

vs.

THE COLORADO OIL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED NOVEMBER 6, 1889.

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1 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered that heretofore and on, to wit, the 15th day of June, A. D. 1887, came the Colorado Oil Company, by Messrs. Wells, *Mc* McNeal and Taylor, its solicitors, and filed in said court its bill of complaint, and sued out of and under the seal of said court a writ of subpœna against Augustus R. Gumaer and the Colorado Oil Company; and the said bill of complaint is in words and figures as follows, to wit:

Bill of Complaint.

In the Circuit Court of the United States for the District of Colorado.

To the judges of the circuit court of the United States for the district of Colorado:

The Colorado Oil Company, a corporation organized and existing under the laws of the State of New York and a citizen of New York, brings this its bill of complaint against Augustus R. Gumaer, of the county of Fremont, in the State of Colorado, and a citizen of the State of Colorado, and the Florence Oil Company, a corporation organized and existing under the laws of the State of Colorado and a citizen of the State of Colorado.

2 And thereupon your orator complains and says—

That your orator was organized and became a body corporate, under the laws of the State of New York, on or about the 16th day of October, A. D. 1885, and that the purpose for which your orator was organized was and is to mine, produce, refine, and deal in oil and *and* its products; that before the organization of your orator a deposit of petroleum oil had been discovered in the county of Fremont aforesaid, and that, immediately after the incorporation of your orator, your orator, having fully complied with all the provisions of the statutes of the State of Colorado governing foreign corporations doing business within the limits of the said State, elected to engage in the business of producing, refining, and dealing in petroleum oil at the vicinity aforesaid, and for that purpose appointed a general manager of its affairs for the State of Colorado, and, as it lawfully might, began to acquire the right to explore, search, and bore for oil in the lands in the vicinity of the district aforesaid; that according to the long-established and well-known usage of the said business it hath been and is customary for the person or company exploring for oil to procure from the proprietors of the lands supposed to contain deposits of oil leases authorizing the leasees therein to sink and bore wells in such lands and to extract the oil therefrom, and take, remove, and appropriate the same, with the right of way to the lessee to pass over the lands so demised to and from such wells, and to lay pipes therein for the removal of the

said oil, and to occupy so much of the surface of the said lands as may be necessary for the sinking, boring, and operation of such wells and for storing and removing the product thereof, and with other rights, privileges, and conditions as may be agreed upon, rendering to the lessor of the said premises some fixed proportion of the product of such wells in full satisfaction and compensation for the lands, rights, and privileges so demised, and that forasmuch as such deposits of oil are customarily found at great depth beneath the surface, and the sinking and boring of such wells involves great expense and great risk, it hath for a long time been and is customary to procure such leases for long periods of time, commonly not less than twenty years, or thereabouts; and your orator shows that the business of exploring and mining for oil and the sinking and boring of wells for the extraction thereof from the lands wherein the same is contained cannot be profitably conducted or carried on except by procuring such leases for long periods of time and in considerable tracts; and your orator in the prosecution of its said business had, before the appointment of the defendant Gumaer to the office and position of general manager of your orator for Colorado, purchased and become invested with divers leasehold interests, authorising your orator to sink and bore for oil upon divers lands at the said county of Fremont, and particularly your orator had acquired a certain lease executed by one Edwin Lobach to a certain corporation or association known as the Land Investment & Coal & Oil Mining Company to forty acres of land, or thereabouts, situated in section 17, in township 19 south, of range 69 west, and a certain other lease before that executed by one James A. McCandless and David G. Peabody for about 107 acres of land, situated in section 16, in the same township and range aforesaid, in and by each of which said leases the lessees therein and your orator, as the assignee of such lesse-s, were entitled to sink and bore upon the said demised premises for oil, and to take, remove, and appropriate the product of such wells and to occupy a sufficient and reasonable portion of the surface of the said lands for the sinking and operation of such wells and for storing and removing the product thereof.

3

4

Your orator further shows that the demise from the said Lobach was for a term of ten years from the 24th day of December, A. D. 1883, and the demise from the said James A. McCandless aforesaid was for a term of twenty years from the eighth day of September, A. D. 1885, and in and by each of the said leases it was provided, amongst other things, that the lessee therein or his or their assigns should pay and render to the lessor therein as rent and royalty and in full compensation for the privileges thereby granted one-tenth part of the oil or other product of the demised premises.

Your orator further shows that afterwards and on or about the 13th day of July, A. D. 1886, your orator appointed the said defendant, Agustus R. Gumaer, its general manager for Colorado; that before the appointment of the said Gumaer your orator had sunk to a deposit of petroleum oil, found to be in paying quantities, upon the premises so leased by the said Edwin Lobach, two wells, and

had extracted therefrom considerable quantities of petroleum oil; that upon the premises so demised by the said James A. McCandless your orator had caused to be sunk two other wells to oil in paying quantities and was then operating the same and extracting therefrom large quantities of oil; that although your orator had procured leases of divers other considerable tracts of land in the said county of Fremont authorizing your orator to bore and sink wells therein for oil, your orator had not elsewhere found in any of its explorations oil in paying quantities, and that by reason of the limited extent of the lands so demised by the said Edwin Lobach and by the said James A. McCandless it became and was necessary that for the convenient and profitable prosecution of its operations
5 and exploring for, extracting, manufacturing, refining, and dealing in oil and its products that your orator should obtain leases on other lands in that same vicinity, as the said defendant before and at the times hereinafter mentioned well knew, and that in view of such necessity your orator at divers times after the appointment of the said defendant to be its general manager as above set forth gave directions to the said defendant to procure leases of any and all lands in the vicinity of the premises so as aforesaid demised by the said Edwin Lobach and the said James A. McCandless authorizing your orator to sink and explore therein for oil and to extract and remove the oil found in or upon such lands, and by your orator's certain letter of attorney to the said defendant, sealed with your orator's corporate seal and delivered on or about the — day of July, A. D. 1886, your orator expressly authorized the said defendant for and in the name of your orator to negotiate for and enter into and execute in the name of your orator leases of any such lands upon terms as aforesaid; that by means of the sinking of the said wells upon the premises so demised by the said Edwin Lobach and upon the premises so demised by the said James A. McCandless it became and was apparent that the adjacent and intervening lands and other lands in that vicinity probably contained oil in paying quantities, and by reason of such explorations and operations of your orator and its predecessors in interest and by reason of his office and position as the general manager of your orator and his familiarity by reason of such position with the operations of your orator and the result of the explorations of your orator and its predecessors in interest as aforesaid the said defendant became aware that the other lands in that vicinity were probably valuable as containing such deposits of oil; that, as your orator is advised by counsel and therefore
6 avers, it became and was the duty of the said defendant, by reason of such knowledge and by reason of the instructions and authority to him given as aforesaid, to seek for, negotiate for, and procure for your orator the grant and lease of the right to explore and sink and bore wells for oil in the lands adjacent to and in the vicinity of the lands so demised by the said Lobach and McCandless; that in pursuance of such duty and instructions the said defendant, on or about the 26th day of July, A. D. 1886, applied to one James A. McCandless, of the said county of Fremont, and pro-

cured from him a certain lease granting to your orator, its successors or assigns, a certain tract or parcel of land situate in Fremont county, containing about 31 acres of land, with the exclusive right (subject to certain conditions and reservations therein expressed) to dig, bore, and mine for and gather all oils and gases, coal and rock, and other valuable mineral substances found in solution or otherwise in and upon the said premises, for a term of 20 years from the date of the said demise, or so long as oil should be found in paying quantities, with a right of way to enter upon the said premises for the purpose of operating, mining, or removing said oil and gases therefrom, and for laying pipes under or on the surface for transportation of oil and gas, and with full power to erect all necessary buildings and tanks upon the said premises for the purpose of procuring and storing said oil and gases, and with the full right in your orator to appropriate to its own use all of the oils and gases found upon the said premises during said term; in and by which said lease, in consideration of the rights and privileges so granted, your orator agreed to render to the said James A. McCandless one tenth part of the oil produced and saved from the said premises, to be de-
7 livered upon the said premises, or, at the option of the said McCandless, in lieu thereof, $\frac{1}{10}$ part of the cash proceeds of the oil so produced, less the cost of sale and transportation; and in and by the said lease your orator covenanted to commence operations for mining and boring purposes and to prosecute the same on some portion of the said premises by sinking or boring two wells to the depth of 1,200 to 1,500 ft., unless oil in paying quantities should sooner be found, and that such work should be prosecuted with reasonable diligence, delays by unavoidable accidents excepted, together with divers other conditions, clauses, covenants, and provisions therein contained, both on the part *part* of the said James A. McCandless and your orator.

And your orator shows that the said last-recited lease was executed in the name of your orator by the said defendant in his capacity as general manager of your orator for Colorado.

That, in further pursuance of his said duty and the instructions aforesaid, the said defendant, on or about the 27th day of September, A. D. 1886, instituted negotiations with one Jesse Frazier, also of the said county of Fremont, to procure for your orator a like lease of the lands hereinafter mentioned, and that afterwards and on or about the 30th day of October, A. D. 1886, the said Jesse Frazier, at the instance and by the procurement of the said defendant, acting in his capacity as general manager for your orator, entered into a certain indenture of lease whereby the said Jesse Frazier let and demised to your orator certain other lands situate in section 16, in said township 19 south, of range 69 west, one hundred acres or thereabouts, in divers parcels, with the exclusive right to dig, bore, and mine for and gather all oils and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the said premises for the term of 20 years from
8 the date of said demise or so long as oil should be found in paying quantities therein, and with the right of way to

enter upon said lands for the purposes of operating, mining, and removing the said oil and gases and for laying pipes either under or on the surface thereof for the transportation of oil and gas, and with full power to erect all necessary buildings and tanks on the said premises for procuring and storing said oil and gases, with the full right to your orator to appropriate to its own use the oils and gases found in and upon the said premises during the said term; and in and by the indenture of lease your orator agreed to render to the said Jesse Frazier $\frac{1}{12}$th part of the oil produced and saved from the said premises, to be delivered on the said premises on the first day of each calendar month, and with divers other covenants and conditions therein contained, both on the part of your orator and the said Jesse Frazier; and your orator shows that the said last-mentioned indenture of lease was executed in the name of your orator by the said defendant as your orator's attorney-in-fact.

And your orator further shows that before and at the time of your orator's appointment of the said defendant to be your orator's general manager as aforesaid and from thence until and upon the 6th day of October, A. D. 1886, one Stephen J. Tanner, then and still of the county of Fremont, was or was claiming to be seized in fee of or otherwise well and sufficiently entitled unto the following-described lands, situate in the said county of Fremont and in the same township and range aforesaid, to wit: The S. E. $\frac{1}{4}$ of sec. 15, the N. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of sec. 15, the N. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of sec. 22, the S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of sec. 22 (about $2\frac{1}{2}$ acres of land in the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of sec. 16, the same which was deeded from McCandless to Tanner), and 24 acres of land lying and being in the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of sec. 22 aforesaid, and that on or about the day and year last aforesaid the said defendant, contriving to deceive and defraud your orator and to extort from your orator divers large sums of money, applied to the said Stephen J. Tanner and procured the said Stephen J. Tanner to execute and deliver to him, the said defendant, a certain lease, bearing the date the 6th day of October, A. D. 1886, aforesaid, granting and demising to him, the said defendant, in his own name, the lands herein last before described (excepting thereout 1 certain tracts, not to exceed 12 acres in all, which before that time had been conveyed to McCandless, Smith, and John Locke, lying within the said sec. 15), with the exclusive right to dig, bore, and mine for and gather all oil and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the said premises; to have and to hold the said premises unto him, the said defendant, for the term of 20 years from the date of the said indenture of lease or so long as oil should be found in paying quantities, with a right of way to enter upon the said premises for the purpose of operating, mining, or removing such oil and gases therefrom and for laying pipes either under or upon the surface of said lands for the purpose of the transportation of the said oil, and to erect all necessary buildings and tanks on the said premises for the purpose of procuring and storing said oils and gases, with the right also to the said defendant

to appropriate to his own use all the oils and gases found upon the said premises during the said term; and in and by the said indenture of lease the said defendant agreed to render to the said Stephen J. Tanner $\frac{1}{10}$th part of the oil produced and saved from the said premises, to be delivered on the said
10 premises to the said Tanner, or, at the option of the said Tanner, in lieu thereof, the said defendant agreed to render to the said Tanner the net market price of the said $\frac{1}{10}$th part in cash, less cost of transportating and marketing the same; and in and by the said indenture of lease the said Tanner reserved the right to use for agricultural purposes whatsoever portion of the said premises the said defendant should not use and need for the said oil and for other purposes therein stated, and the said defendant covenanted not to disturb any tillable land unless absolutely necessary to carry out the terms of the said demise; also to commence operations for mining and boring purposes and to prosecute the same on some portion of the said premises within 10 days from the date thereof, or within 60 days from that date to commence and prosecute with reasonable diligence (delays by unavoidable accidents excepted) the sinking or boring of one well upon the premises to a depth of 1,200 to 1,500 ft., unless oil in paying quantities should sooner be found, and that such work should be prosecuted with reasonable diligence, delays by unavoidable accidents excepted; and in and by the said indenture of lease, among other things therein contained, it was and is provided that failure of the said defendant to comply with the terms of the clause thereof last herein recited should nullify the said lease and render the same void; and in and by the said indenture of lease it was further expressly covenanted that the said defendant should sink at least three wells upon the said premises and complete two of said wells before the 1st day of May, 1887; also should complete three derricks before the date last aforesaid, and that the said defendant should be entitled to bore one of the said two wells
11 upon the said S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of sec. 15, and that the said $2\frac{1}{2}$ acres of land in the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of sec. 16 should not be drilled upon without the written consent of the said Stephen J. Tanner.

And further shows that afterwards and on or about the 8th day of October, A. D. 1886, the said defendant caused the said last-mentioned indenture of lease to be filed for record in the office of the recorder of the said county of Fremont, and the same was there recorded in Book 28 thereof, at pages 368 and the following pages of the said books of record.

Your orator further shows that in and about the negotiation for and procuring of the said lease the said defendant was assisted by one Samuel H. Baker, an attorney-at-law, then residing at the county of Fremont, and then and there under general retainer of your orator, as the said Stephen J. Tanner then very well knew.

And your orator further shows on information and belief that the said defendant was, at the time of procuring the said indenture of lease to be executed, a man of little means and not supposed to be able to carry out or perform the covenants in said lease contained

on his part to be kept and performed, and that the said Tanner was induced to enter into the said indenture of lease solely by reason of his knowledge that the said defendant was the general manager of your orator, and that said Samuel H. Baker was the attorney of your orator, and by the belief then and there entertained, as your orator on information believes and avers, by him, the said Tanner, that the said lease was procured for the benefit of your orator, and that the conditions and covenants therein contained and therein expressed to be kept and performed by the said defendant would be kept and performed by your orator.

And your orator further shows that shortly after procuring
12 the before-recited lease the said defendant entered into and upon the said S. W. ¼ of the S. W. ¼ of sec. 15 in the said indenture of lease mentioned and erected thereon a derrick and began to sink and drive therein a well for the discovery and extraction of oils, and that some time subsequently the said defendant erected in the N. E. ¼ of sec. 22 aforesaid and upon some part of the premises in the said last-mentioned ¼ sec. in and by the said indenture of lease demised to him a certain other derrick, and began to sink in and upon the said last-mentioned premises a second well for the discovery and extraction of oil from the said premises; and the said defendant, until discharged from his position as general manager of your orator aforesaid, prosecuted work upon the said two wells and sunk the said first-mentioned well to a depth of 1,000 feet or thereabouts, and the second-mentioned well commenced, and your orator hath completed the same to a depth of 600 feet or thereabouts; that in the said first-mentioned well the said defendant developed and discovered oil in paying quantities, but in the said last-mentioned well no oil hath hitherto been found; that save as aforesaid the said defendant hath never kept or performed the conditions and covenants in the before-recited indenture of lease from the said Stephen J. Tanner to the said defendant on the part of the said defendant to be kept and performed, and that all the boilers, steam-engines, cables, material, tools, and supplies used and expended in and about the construction of the said derricks and the sinking and boring of the said last-mentioned two wells were the property of your orator, and that all and singular the laborers, servants, and employés employed in and about the erection of the said derricks and the sinking of the said wells were
by the said defendant for their service in that behalf paid
12½ by the said defendant out of the moneys of your orator; and your orator on information and belief avers the said defendant in and about the erection of the derricks and the sinking of the said two wells used and applied machinery, goods, and chattels of your orator to the value of $6,000 or thereabouts, and paid, laid out, and expended moneys of your orator to the amount of $1,500 or thereabouts; and the said defendant, as your orator on information and belief avers, in and about the erection of the said derricks and the sinking and boring of the said wells and in and about all and singular the acts and things by him in that behalf done and performed, assumed and gave out that he was acting for

your orator, and that the said wells were the wells of your orator, and the said first before-mentioned well so by the said defendant sunk and driven on the S. W. ¼ of the S. W. ¼ of sec. 15 aforesaid was by the said defendant at the time aforesaid designated and ever since hath been known as and called your orator's well No. 8, and the said well secondly above mentioned so by the said defendant commenced on the S. E. ¼ of the S. E. ¼ of sec. 15 and the N. E. ¼ of the N. E. ¼ of sec. 22 aforesaid was by the said defendant at the time aforesaid designated and ever since hath been called and known as well No. 9 of your orator.

And your orator is advised by counsel and therefore avers that by reason of the foregoing premises the said defendant forthwith after the execution of the said indenture of lease held and ever since that hath held the estate, rights, and privileges in him by the said indenture of lease vested solely in trust for your orator and to be assigned, transferred, and set over to your orator on request, and your orator had well hoped that the said defendant would, as in duty bound, have assigned and transferred to your orator the

13 said indenture of lease so by the said Tanner granted to the said defendant, and all and singular the estate, rights, and privileges thereby expressed to be granted to and conferred upon the said defendant on request, but now so it is, may it please your honors, that on or about the 20th day of December last past, the said defendant, contriving to deceive and defraud your orator, made and subscribed a certain paper-writing whereby he, the said defendant, assumed to let and demise to your orator the S. W. ¼ of the N. W. ¼ of sec. 23, township 19 S., of R. 69 W., with divers rights and privileges therein expressed to be granted to your orator, and whereby it was set forth that your orator agreed to sink two wells and complete three derricks on or before the 1st day of May, 1887, on the following-described property, to wit: One to be on the S. W. ¼ of the S. W. ¼ of sec. 15, and the others to be either on the N. E. ¼ of the N. E. ¼ of sec. 22 or the S. E. ¼ of the S. E. ¼ of sec. 15, township 19 S, of R. 69 W.; said wells to be sunk subject to the conditions of a certain lease from Stephen J. Tanner to said defendant, recorded in Book 28, at pages 368–371 of the records of Fremont county, Colorado; and further contriving to deceive and defraud your orator, the said defendant caused the said last-mentioned paper-writing to be falsely dated as of the 12th day of October, A. D. 1886; that afterwards and on or about the same 20th day of December, A. D. 1886, the said defendant executed a certain other paper-writing, whereby he, the said defendant, assumed to grant, lease, and demise to your orator, its successors and assigns, that tract or parcel of land and rights and privileges in and to land situate in the said county of Fremont and in the said paper-writing described in the words and figures as follows, to wit: "The oil well which has heretofore been sunk on the S. W.

14 ¼ of the S. W. ¼ of sec. 15, t'p 19 S., of R. 69 W., in accordance with a lease from party of the first part of date October 12th, 1886, and all rights and privileges in connection with said well which said Gumaer has in said well and in the land

whereon it is located by virtue of a lease from one Stephen J. Tanner recorded in the concluded records of said Fremont county, in Book 28, at pages 368–371; also the right to complete the oil well known as Colorado Oil Company's well No. 9, which ison an 80-acre tract of land, which consists of the S. E. ¼ of the S. E. ¼ of sec. 15 and the N. E. ¼ of the N. E. ¼ of sec. 22, t'p 19 S., of R. 69 W., of the 6th principal meridian, and the right to sink one other oil well on such part of said 80-acre tract last above described as said party of the second part shall select, and also all right and privileges and title which said party of the first part has under and by virtue of said certain lease from one Stephen J. Tanner of date October 6th, 1886, recorded in the records of Fremont county, in Book 28, at pages 368–371, in and to a tract of land 17 rods square, whereof said well No. 9 is the center, and in and to another tract of land 17 rods square, whereof the well above specified as hereafter to be located and sunk shall be the center," together with certain other rights and privileges and subject to certain conditions in the said last-mentioned paper-writing set forth; and in and by the last-mentioned paper-writing it was and is provided that your orator agreed to complete said well No. 9 and to erect a derrick for the second well to be sunk on the 80-acre tract therein above described as above set forth on or before the 1st day of May, A. D. 1887; and that if your orator should fail to keep and perform the covenants and agreements therein by it to be kept and performed, then the said lease should be null and void and surrendered to the said defendant.

15 And your orator further shows on information and belief that the first before-mentioned pretended indenture of lease so by the said defendant executed to your orator and purporting to have been executed on the 12th day of October, 1886, was never in truth concluded, written, or subscribed by said defendant until on or about the 20th day of December, 1886, and in and about causing the said two last-mentioned paper-writings to be prepared and executed, and in and by means of the false date given to the first of the said two papers-writings, the said defendant was contriving to deceive and defraud your orator and to cause it to be made to appear, contrary to the fact, that your orator was ehtitled to no part of the premises so by the said Tanner demised to the said defendant, save the part thereof in the said last-mentioned paper-writing mentioned, and that said two wells, No. 8 and No. 9, of your orator were in truth sunk and driven by your orator and were designated as the wells of your orator solely by reason of the provisions, conditions, and covenants of the last-mentioned paper-writing; that on or about the 20th day of December last one Isaiah Josephi, vice-president of your orator, came to the said county of Fremont and, being then and there informed of the execution of the said before-recited lease by the said Stephen J. Tanner to the said defendant, demanded of the said defendant that he should assign the said lease and all rights and privileges thereby granted unto your orator; that said defendant thereupon, further contriving to deceive and defraud your orator, falsely represented and pretended to the said Josephi and caused

the said Josephi to believe that he, the said defendant, before accepting the position of general manager of your orator and before entering into the service of your orator in such position as hereinbefore set forth, had obtained from the said Tanner
16 some agreement whereby the said Tanner had bound himself to let and demise the said before-described premises to said defendant, and that by reason of such prior agreement he, the said defendant, was well entitled to negotiate for, take, and procure the said lease to himself without violation of his duty to your orator or the instructions and authority by your orator in that behalf given, and that he, the said defendant, had been expressly authorized by the president of your orator to use the materials, tools, and supplies of your orator in and about the sinking of the said wells, and to pay and discharge the wages of the men and servants by him in that behalf employed out of the moneys of your orator; whereas, in truth and in fact, as your orator shows on information and belief, the said defendant, at and before entering into the service of your orator in his position of general manager of your orator, had not entered into any agreement with the said Tanner whereby the said Tanner was in any manner bound to let or demise to the defendant the said before-described premises so by the said Tanner let and demised to said defendant as hereinbefore set forth, or any thereof, or any right or privileges in respect of the same, nor was the said defendant even authorized by the president of your orator to use the tools, materials, or supplies of your orator or apply the moneys of your orator in the improvement or development of the private lands or estate of him, the said defendant, and that if any authority was by the said president of your orator given or granted to the said defendant to use the tools, machinery, or supplies of your orator or apply the moneys of your orator towards the sinking or boring of such wells, such authority was procured by the said defendant solely by reason of his representations that the said wells were located upon and were to be
17 sunk for the development and improvement of the lands of your orator; nevertheless the said Isaiah Josephi, believing the false representations of the said defendant in that behalf and not knowing the contrary thereof, assumed to accept from the said defendant the last before-recited indenture of lease so by the said defendant assumed to be granted to your orator, and in the name and behalf of your orator assumed to execute the same.

And your orator further shows that in and about executing the last-mentioned indenture of lease in the name of your orator and in and about assenting to or accepting the said demise of the S. W. ¼ of the N. W. ¼ of sec. 23 aforesaid, so falsely dated by the said defendant as of the 12th day of October, 1886, the said Isaiah Josephi acted wholly without authority of your orator, and that your orator hath never assented to or accepted the said two last-mentioned pretended indentures or either thereof or in any manner waived or renounced its right to have the said indenture of lease so by the said Tanner granted to the said defendant assigned, transferred, and set over to your orator, and that on or about the 24th

day of February last past your orator exhibited in the district court in and for the said county of Fremont its certain complaint against the said defendant, praying that said defendant might be decreed and held to be the trustee of your orator as to said lease and ordered, adjudged, and decreed to assign the same unto your orator, which said suit your orator shows is now still depending; that on or about the 1st day of April last past your orator, in pursuance of the covenants and conditions in the said indenture of lease expressed to be kept and performed by the said defendant, caused to be erected upon the said demised premises a third derrick, with all
18 proper and sufficient machinery, tools, and appliances, for sinking a third well thereunder and completed the said derrick, with its appliances and appurtenances, before the 1st day of May last, and your orator hath in all things kept, observed, and performed the covenants and conditions in the said indenture of lease therein expressed to be kept and performed by the said defendant.

Your orator further shows that the 2½ acres situated in the S. E. ¼ of sec. 16, in the said indenture of lease mentioned, and which in and by the said indenture of lease it is provided shall not be drilled upon without the written consent of the said Tanner, are situate within 300 yards, or thereabouts, of your orator's said well No. 8, and that on or about the 1st day of January last past the said defendant (having shortly before that been discharged from the service of your orator) caused and procured the said The Florence Oil Company, which your orator shows on information and belief is a corporation organized and existing under the laws of the State of Colorado and organized at the instance and by the procurement of the said Gumaer, to enter into and upon the said 2½ acres, and under pretence of some authority from the said Tanner began to sink and drill and did drill and complete two wells on the said 2½ acres, and some time in March last past, as your orator on information and belief avers, began to extract and remove and have been ever since extracting and removing divers large quantities of oil by and through the said wells.

And your orator shows on information and belief that in or about the sinking and operation of the said wells the said defendant was and is animated solely by a purpose to diminish the yield of the well No. 8 of your orator and to harass and injure your orator; that with the like purpose the said defendant shortly after the erection of the derrick by your orator erected in the
19 month of April last past, as hereinbefore set forth, caused to be filed with one George W. Clelland, a justice of the peace for the said county of Fremont, a certain complaint and information setting forth that Charles Le Fevre with others were, on the day and year last aforesaid, guilty of trespassing upon the premises of him, the said defendant, and thereupon caused and procured the said George W. Clelland, the said justice of the peace, to issue a certain warrant or capias directed to all sheriffs, coroners, and constables within the said State, and requiring them to take the said Charles Le Fevre and others and bring them forthwith before the said George W. Clelland, copies of which said complaint and

warrant are hereto attached and prayed to be taken as a part thereof, and that by reason of the said last-mentioned warrant or capias the said defendant, on or about the same day and year aforesaid, the same being the first day of the week, commonly called Sunday, caused the said Charles Le Fevre and others, the servants of your orator employed and engaged at the said last-mentioned derrick, to be arrested and removed therefrom, and thereupon the said defendant, with a large force of men, fifty in number, or thereabouts, by him levied for that purpose, proceeded to tear down and destroy the said derrick; that on or about the 7th day of June, instant, the said defendant caused to be served upon your orator a certain notice, hereto attached and prayed to be taken as a part thereof, requiring your orator to vacate and surrender possession to him within 10 days thereafter of the S. W. ¼ of the N. W. ¼ of sec. 23, t'p 19 S., of R. 69 W., and the S. W. ¼ of the S. W. ¼ of sec. 15, and the N. E. ¼ of the N. E. ¼ of sec. 22, and the S. E. ¼ of the S. E. ¼ of sec. 15, in the t'p and range aforesaid; that said defend-
20 ant is what is commonly known as "a bad man," prone to violence, brawls, and breaches of the peace, and your orator fears and believes that, unless restrained by injunction as hereinafter prayed, the said defendant, under pretence that the said premises are held by your orator of him, the said defendant, as in the said notice asserted, will by force assume possession of the said premises and of the improvements so erected thereon, destroy and throw down the derricks of the said wells, break and destroy the tools and implements of your orator upon the said premises, and will, by blocking up the said wells with steel bars or other like instruments or by forcibly withdrawing the casing thereof or by inserting and exploding torpedoes therein, destroy the capacity of the said wells for the production of oil.

And your orator shows that the said derricks are lofty structures composed of timbers, planks, beams, and boards bolted together with iron bolts, and compose part of the realty, and that to permit the destruction thereof will involve the destruction of the substance of the real estate; that if the oil wells or either thereof be obstructed in manner as before set forth, or the casing thereof be withdrawn or torpedoes be exploded therein, the productive capacity of the said well will be destroyed and the said well totally ruined, and that whether the deposit of oil reached by the said wells or either thereof can afterwards be struck or found by another well sunk in the vicinity thereof is uncertain; wherefore your orator shows that to permit such unlawful conduct of the said defendant will be to the irreparable injury of your orator.

And your orator shows on information and belief that the said defendant is a man of small means, and hath not in the said district real or personal property sufficient wherefrom to satisfy
21 the damages which would be occasioned to your orator by such unlawful conduct of the said defendant.

And your orator shows that the matter in controversy herein exceeds the sum or value of five thousand dollars ($5,000) exclusive of interest and costs.

22 To the end, therefore, that the said defendants may show, if they can, why your orator should not have the relief hereby prayed and may, but not on oath, the oath of said defendants to their respective answers hereto being hereby expressly waived, full, true, and perfect answers make to this your orator's bill of complaint, that said defendant, A. R. Gumaer, be restrained from assigning, transferring, or incumbering the leasehold estate so by the said Stephen J. Tanner granted to him in or to the before-described premises or any thereof; that the said defendants and all and singular their agents and servants and those claiming authority under them or either of them may be restrained and enjoined from extracting or removing or using or consuming from any part of the premises so by the said Tanner demised to the said Gumaer any oil, gas, or other valuable metal or mineral, whether found in solution or otherwise; that said defendants and each of them, their officers, agents, and servants and all claiming authority under them or either of them, be in like manner restrained and enjoined from intermeddling with the said premises or with your orator's possession thereof, and particularly from obstructing or interfering with your orator's possession and enjoyment of the said wells No. 8 and No. 9 of your orator in this your orator's bill of complaint herein set forth and described and from subverting, tearing down, or destroying the derricks erected at and over the said wells or the machinery, tools, and implements of your orator thereat and from molesting, harassing, assaulting, or disturbing the officers, agents, and employés of your orator at the said premises or any of them.

And that your orator may have such further relief or such other and different relief as to your honors may seem meet and
23 according to equity.

May it please your honors to grant to your orator, not only the most gracious writ of subpœna, under the seal of this honorable court, directed to the said Agustus R. Gumaer and said The Florence Oil Company, commanding them and each of them, on a day certain therein to be named and under a certain penalty, to appear at this honorable court, then and there to answer the premises and to stand to, perform, and abide the further direction and decree of this honorable court, but also the writ of injunction strictly restraining the said defendant Gumaer from in any way assigning, transferring, or encumbering the leasehold estate, rights, and privileges so by the said Tanner by the said indenture of lease, bearing date the 6th day of October, A. D. 1886, granted and demised to the said defendant in and to the premises in the said indenture of lease mentioned or any thereof, and strictly enjoining and restraining the said defendants and each of them and their agents, servants, and every of them from extracting or removing, using or consuming, from the said premises in the said indenture of lease described any oil, gas, metal, or mineral, whether found in solution or otherwise, and strictly restraining and enjoining the said defendants, each of them, their and each of their agents and servants and every of them, from intermeddling with the said premises or your orator's possession

thereof, and from obstructing or interfering with your orator's possession and enjoyment of the said wells known as your orator's well No. 8 and your orator's well No. 9, situate upon the premises in the said indenture of lease mentioned, and from subverting, tearing down, or destroying the derricks erected at and over the said wells or either thereof, or the machinery, tools, and implements of your orator thereat, and from molesting, assaulting, or dis-
24 turbing the officers, agents, servants, and employees of your orator at the said premises or in going to and from the same.

And, as in duty bound, your orator will ever pray.

(Signed) E. S. WELLS,
R. T. McNEAL,
JNO. G. TAYLOR,
Plaintiff's Sol'rs & of Counsel.

(Signed) COLORADO OIL COMPANY,
By S. W. JOSEPHI,
General Manager for Colorado.

25 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

S. A. Josephi, being first duly sworn, says on oath that he is the general manager for Colorado of The Colorado Oil Company, complainant in the foregoing bill of complaint; that he hath read the foregoing bill of complaint and knows the contents thereof; that said bill of complaint is true to deponent's knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true; that deponent is the only officer or agent of the corporation now present or who, for several months past, has been present in the said State of Colorado; that by reason of deponent's position as the general manager of the said company deponent hath, as he verily believes, a competent knowledge of the matters and things in the foregoing complaint set forth.

(Signed) S. A. JOSEPHI.

Subscribed and sworn to before me this 15th day of June, A. D. 1887.

[SEAL.] (Signed) BEN. CHASE,
Notary Public.

26 *Copy Criminal Complaint.*

STATE OF COLORADO, } ss:
County of Fremont, }

The complaint and information of A. R. Gumaer made before George W. Clelland, Esq., one of the justices of the peace in and for said county, on the first day of May, A. D. 1887, — were guilty of trespassing upon the premises of the said A. R. Gumaer. He therefore

prays that the said Charles Lefevre and others may be arrested and dealt with according to law.

Subscribed and sworn to before me this first day of May, A. D. 1887.

(Signed) GEORGE W. CLELLAND, [SEAL.]
Justice of the Peace.

27 *Copy Warrant.*

STATE OF COLORADO, } ss:
Fremont County, }

The People of the State of Colorado to all sheriffs, coroners, and constables within said State, Greeting:

Whereas A. R. Gumaer hath this day made complaint on oath before George W. Clelland, Esquire, one of the justices of the peace of said county, that on or about the first day of May, A. D. 1887, *that* Charles Lefevre and several other parties are now guilty of trespassing on the land of the said A. R. Gumaer, contrary to the form of the statute in such case made and provided and against the peace and dignity of the people of the State of Colorado:

We therefore command you forthwith to take the said Charles Lefevre and others and bring *him* forthwith before the said George W. Clelland, Esquire, or in case of his absence before any other justice of the peace, to be dealt with according to law. Hereof fail not at your peril.

Given under my hand and seal this first day of May, A. D. 1887.

GEORGE W. CLELLAND, [SEAL.]
Justice of the Peace.

28 *Copy Notice to Quit.*

To the Colorado Oil Company:

You are hereby notified to vacate and surrender peaceable possession to the undersigned, within 10 days after the service hereof, of all and singular the premises hereinafter described, situate in the county of Fremont, State of Colorado, to wit: The southwest quarter of the northwest quarter of section twenty-three (23), in township nineteen (19) south, of range sixty-nine (69) west; also the S. W. ¼ of the S. W. ¼ section 15, and the N. E. ¼ of the N. E. ¼ section twenty-two, and the S. E. ¼ of the S. E. ¼ sec. 15, in the township and range aforesaid; which said premises you are occupying as my tenant, and the further right to the occupancy of which you have forfeited by reason of failure upon your part to comply with the terms and conditions contained in the written leases under which said premises were respectively demised to you; and you are hereby notified at your peril not to erect any fur- structures or improvements upon said premises or do any work or development thereon, *at your peril.*

A. R. GUMAER.

Dated this 7th day of June, 1887.

(Endorsed:) 2161. Colorado Oil Company *vs.* Agustus R. Gumaer — The Florence Oil Company. Bill. Filed June 15th, 1887. William A. Willard, clerk. Wells, McNeal & Taylor, attorneys, Denver, Colorado.

29 And the said subpœna, with the return of the marshal thereto, is in words and figures as follows, to wit:

Subpœna and Return. Subpœna in Chancery.

United States Circuit Court, District of Colorado.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to Agustus R. Gumaer and The Florence Oil Company, Greeting:

You and every of you are hereby commanded that you appear be- the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in August next (it being the 1st day of August, A. D. 1887), to answer the bill of complaint of The Colorado Oil Company this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

30 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver aforesaid, this 15th day of June, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 111th year.

[SEAL.]

(Signed) WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill

will be taken against them as confessed and a decree entered accordingly.

(Signed) WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Ch'y subpœna. 2161. Wells, McNeal & Taylor. The Colorado Oil Co. *vs.* A. R. Gumaer & Florence Oil Co.

Marshall's Return.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

DENVER, *June 20th*, 1887.

I have duly executed the within writ by delivering to A. R. Gumaer and to A. R. Gumaer, as gen'l manager of The
31 Florence Oil Company, no other officer or agent residing in the State, and each of them, personally, a true copy of the within writ, at the place and time as follows, to wit: As to A. R. Gumaer, on the 18th day of June, A. D. 1887, at Canon City, in Fremont county, Colorado; as to A. R. Gumaer, gen'l manager of The Florence Oil Company, at same time and place.

This writ therefore returned executed as the law directs this 20th day of June, A. D. 1887.

Marshal's Fees.

Service, 2 persons, at $2.00 each	$4 00
Mileage, — miles at 6c., going only	
Sleeper, one way	2 00
Meals	50
Per diem	5 00
R. R. fare	13 60
Total	$25 10

(Signed) ZEPH. T. HILL, *Marshal*.

(Endorsed:) Gen. No., 2161. Circuit court of the United States for the district of Colorado. In chancery. The Colorado Oil Company *vs.* Agustus R. Gumaer *et al.* Subpœna. Returnable to rule day first Monday in August, A. D. 1887. William A. Willard, clerk. Filed this 20th day of June, A. D. 1887. (S'g'd) William A. Willard, clerk, by F. W. Tupper, deputy clerk. Wells, McNeal & Taylor, of Denver, compl't's sol'r. June 18th, Sat., as gen'l manager.

And afterwards and on, to wit, the 16th day of June, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said courts—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order Restraining Defendant Gumaer.

32 THE COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY.
} 2161. In Chancery. Bill for an Injunction and for Other Relief.

At this day, on motion of the said complainant, it is ordered by the court that the application of the said plaintiff for an injunction according to the prayer of the said plaintiff's bill of complaint herein be set down to be heard on the 27th instant, at the hour of ten in the morning of said day, before the court.

And it is further ordered by the court that in the meantime and until the further order of the court the said defendant, Agustus R. Gumaer, be restrained from in any way assigning, transferring, or incumbering the estate, rights, and privileges granted to him, the said Agustus R. Gumaer, by one Stephen J. Tanner by a certain indenture of lease bearing date the 6th day of October, A. D. 1886, and afterwards recorded in the records of the office of the recorder of the county of Fremont, in the State of Colorado, in Book 28 of the said records, at page 368 and following thereof, and that said defendants and each of them, their officers, agents, and servants, and all claiming authority under them or either of them, be in like manner in the meantime and until further order of this court restrained from assuming forcible possession of the premises in the said complaint mentioned or any thereof and from tearing down or destroying the derricks erected at and over the wells known as well No. 8 and well No. 9 of the Colorado Oil Company situate upon the said premises, and from in any way destroying, breaking, interfering with, or removing the machinery, tools, or implements of the said plaintiff, or the machinery, tools, or implements in the
33 possession of the said plaintiff upon the said premises, and from molesting, assaulting, or disturbing the officers, agents, servants, or employés of the said plaintiff or any of them in going to and from the said premises or operating said wells.

Ordered that the clerk certify a copy of this order and that said plaintiff cause the same forthwith, or as soon as may be, to be served upon the said defendants or such of them as can be found.

And afterwards and on, to wit, the 27th day of June, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Restraining Order Continued.

THE COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER *et al.*
} 2161. In Chancery. Bill for an Injunction and for Other Relief.

At this day, in pursuance of stipulation of counsel filed herein, it is ordered by the court that the restraining order heretofore awarded herein stand and remain in full force until the final hearing hereof. Ordered that the defendants answer to the merits on or before the 15th day of September next.

And afterwards and on, to wit, the 12th day of September, A. D. 1887, came the defendant Agustus R. Gumaer, by Messrs. John M. Waldron and A. Macon, his solicitors, and filed in said court and in said cause his answer to the bill of complaint heretofore
34 filed herein; and the said answer is in words and figures as follows, to wit:

Answer of Gumaer.

In the Circuit Court of the United States for the District — Colorado.

THE COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY.

The several answers of Agustus R. Gumaer, one of the defendants, to the bill of complaint of The Colorado Oil Company, complainant.

This defendant, now — at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereto or unto such parts thereof as this defendant is advised is material for him to make answer unto, answering, says that as to whether or not the complainant is a corporation organized under the laws of the State of New York for the purpose of mining for producing oil and refining the same, and whether or not said complainant duly or at all complied with the laws of the State of Colorado in that behalf made and provided, this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief.

Defendant admits that complainant was engaged in and
35 about exploring for and producing oil in the vicinity of the town of Florence, in the county of Fremont, State of Colorado, at the time alleged in the bill of complaint, and admits that the complainant appointed him its general manager for Colorado on or about the 13th day of July, 1886, as alleged in the bill of complaint; admits that prior to the appointment of this defendant, as

aforesaid, complainant or its predecessors had sunk to a deposit of petroleum oil on the premises leased to complainant or its grantors by one Edwin Lobach and had extracted therefrom oil in paying quantities.

Also admits that complainant had procured leases of divers tracts of land from the several persons named in the bill of complaint, and admits that complainant had only found oil in paying quantities in the vicinity of the said tracts of land so leased by it of Lobach and others in that vicinity, but this defendant denies it became or is necessary for the convenient or profitable prosecution of said complainant's said business that complainant should obtain leases on other lands in the same vicinity, or that this defendant was so advised thereof as alleged in the bill of complaint; and defendant denies that by means of the sinking of wells or any act or acts done or performed by the complainant on the lands of said Lobach or any other person or persons while this defendant was in the employ of the complainant or its predecessors the fact was ascertained or became known to this defendant that the lands adjacent to said land so leased by complainant as aforesaid from said Lobach and others probably contained oil in paying or other quantities or at all; denies that by reason of such alleged or any explorations or acts or works done by complainant or its predecessors while
36 this defendant was in the employ of complainant or its predecessors, or by means of his office or position as the general manager of complainant, or in any other capacity as the employee of complainant, or by means of this defendant's familiarity with the business of complainant or its work in sinking wells upon said tracts of land or any other, this defendant became aware or in any manner whatever learned or ascertained the facts that other lands in that locality or vicinity were or probably were what is known as oil-bearing lands, or that this defendant, by means of the premises aforesaid or by means of any of the alleged facts in said complaint set forth, learned or ascertained any fact or facts, knowledge or information, respecting the probability or likelihood that the lands in the said vicinity, locality, or neighborhood contained or probably contained oil in paying or other quantities or at all.

And this defendant, further answering in this behalf, denies it became or it was his duty as the general manager of complainant for the State of Colorado, or by reason of any other employment by complainant of defendant, or by reason of his knowledge as to the business of complainant or otherwise, or by reason of any instructions received by him and given by complainant, or by reason of his authority in the premises or otherwise or at all to seek, for, negotiate for, or procure for complainant any grant or lease or right to explore or sink or bore wells for oil or otherwise in lands adjacent to or in the vicinity of the lands demised and leased by said Lobach and James A. McCandless or either of them to complainant, and denies that in pursuance of such supposed duty on the part of this defendant or the instructions of the complainant in that behalf given and received by this defendant that this defendant applied to

any one save and except James A. McCandless or procured
37 from any one but said McCandless any lease or leases to the complainant, its successors or assigns, as alleged in the bill of complaint herein or otherwise or at all, save and except that this defendant simply executed the said lease made by said Jesse Frazer on behalf of complainant after the parties thereto had fully agreed upon the terms and conditions thereof without the intervention of this defendant in that behalf, and defendant avers that he took no part in making the said agreements; that all he did in the premises was to simply execute for complainant the said lease, as he was directed and authorized to do by complainant.

And this defendant, further in this behalf answering, denies that the complainant instructed or requested him, while acting as the general manager of said complainant or at all, to procure leases of lands in the vicinity of the said lands of complainant, and denies that it was his duty in that behalf to procure the said or any leases as in said complainant mentioned and alleged or otherwise or at all.

And this defendant denies that complainant ever requested or instructed him at any time or that it was his duty to procure a lease or any other right to the said tracts of land mentioned in the complainant as the lands belonging to one Stephen J. Tanner, adjacent to the said wells and explorations of said complainant and described as follows, to wit: The southeast quarter of section 15, the north half of the northeast quarter of section 22, the southwest quarter of the northeast quarter of section 22, the north half of the southwest quarter of section 15, about 2½ acres in the S. E. ¼ S. E. ¼ of section 16, which was deeded from McCandless to Tanner, and twenty four (24) acres belonging to said Stephen J. Tanner, lying in the N. E. ¼
N. W. ¼ of section 22, all of said land in township 19 south,
38 of range 69 west, excepting not to exceed 12 acres of land lying within said section 15, township and range aforesaid.

And defendant denies that he was directed or instructed by complainant by written power of attorney of date July, 1886, or of any other date or at all, to procure or negotiate for leases of any lands whatever for and in behalf of said complainant.

But this defendant alleges that the only matters or things in any manner discussed or considered by said complainant and this defendant respecting said tracts of land so belonging to said Tanner and leased to this defendant was as to the rights which this defendant had in and to said Tanner's said tracts of land under and by virtue of a certain agreement dated December 10th, 1885, whereby said Tanner promised and agreed and bound himself to sell and convey all said tracts of land and other lands adjacent to the same to this defendant upon certain terms and conditions therein and thereby contained on or before the 10th day of December, 1886, and that said complainant well knew of the existence of said agreement before and at the time of the employment of this defendant as the general manager of complainant for Colorado; and this defendant, in this behalf further answering, admits that the several tracts of land mentioned in the complaint as the land of Stephen J. Tanner,

save and except the southwest quarter of the northwest quarter of section 23, T. 19 S., of R. 69 W., were owned by him, said Tanner, as in said bill of complaint is alleged, and alleges that said southwest quarter of the northwest quarter of said section No. 23, in township No. 19 south, of range No. 69 west, was never owned by said Tanner, nor did defendant ever lease said last-mentioned tract from said Tanner, and defendant admits that he procured a lease of all of said lands as in said bill of complaint is alleged; but this defendant
39 denies that he did so for the purpose of deceiving or defrauding the complainant, or that this defendant did by procuring the same for himself deceive or defraud the complainant or to extort from complainant any sum or sums of money whatever, but defendant alleges that he procured said lease from said Tanner and the same was given by said Tanner to this defendant in pursuance of an agreement in good faith entered into by and between this defendant and said Tanner on the 10th day of December, 1885, and the same was entered into by this defendant in good faith and without any reference to any purpose or intent to deceive or defraud the complainant or any other person or persons but for the purposes and objects in said lease set forth and contained and no other whatever; and defendant avers that complainant had actual knowledge, at and before the appointment of defendant as its general manager as aforesaid, that the defendant had entered into said contract with said Tanner, and complainant expressly agreed, when it employed defendant as aforesaid, that he, defendant, might procure a lease of the premises in controversy from said Tanner to himself individually and not for or in behalf of complainant; and this defendant admits that he was assisted by one Samuel H. Baker, an attorney-at-law, in framing the said lease from said Tanner on the 6th day of October, 1886, but defendant denies that said Baker in assisting defendant to procure said lease acted as the attorney of complainant, but avers that said Baker was then and had been the attorney of defendant long prior to that date and long prior to the employment of this defendant as the general manager or otherwise of complainant, and denies that said Tanner then or there well knew or knew at all that said Baker was retained as the attorney or otherwise of the said complainant.

40 Denies that — the time of procuring said lease by this defendant of said Tanner that defendant had not sufficient means or was supposed not to have sufficient means to carry out or perform all the covenants and agreements to be kept and performed by and on his part in the said lease contained, and denies that said Tanner, in the making of said lease, was induced to or did enter into said contract of lease, solely or at all, by reason of his knowledge or belief that this defendant was the general manager or was otherwise acting for said complainant, or that said Baker was the attorney of complainant, and denies that said Tanner was in any manner induced to or did make said lease to defendant by reason of his belief, or that said Tanner did believe that said defendant was acting in procuring said lease for complainant, and denies that said Tanner believed said lease so made by him to this defendant was for the

complainant or that he, said Tanner, was induced to make said lease to defendant because of his belief that the condition or covenants therein mentioned to be kept and performed by this defendant would be kept *an* and performed by the complainant or by any other person or persons other than this defendant; and this defendant, further answering, denies that he was unable to carry out, fulfill, and perform all the covenants, conditions, and agreements to be kept and performed on his part by him set forth and contained in the said lease made by said Tanner to defendant, or that said Tanner supposed or believed that in executing said lease the covenants and conditions therein mentioned would be kept or performed by the complainant; and this defendant, further answering, admits that soon after procuring the said indenture of lease from the said Tanner he entered upon the S. W. ¼ of S. W. ¼ sec. 15 in the said indenture of lease mentioned and commenced the work of
41 sinking thereon a well for the extraction of oil therefrom, and that this defendant prosecuted such work and succeeded in finding oil in said well in paying quantities, and that in prosecuting such work defendant used tools, implements, moneys, and laborers of the complainant, and that said well has at all times been known and called well No. 8 of complainant, but this defendant avers that all such acts and doings of this defendant in and about sinking said well *was* so done by him under and by virtue of an agreement made and entered into by and between complainant and this defendant long prior to all such work, and admits that he built a derrick on N. E. ¼ sec. 22 in said lease mentioned, but denies that he sunk any well or wells thereon or did any other work other than as above stated in this answer.

And denies that this defendant has not kept or performed all and singular the covenants and agreements contained in the said lease so made by said Tanner to this defendant on the 6th day of October, 1886, but, on the contrary, avers the truth to be that this defendant hath duly and fully kept and performed all and singular the covenants, conditions, and agreements contained in and by the said lease to be kept or performed by and on his part, and admits that all the tools, implements, material, and supplies used in or about the construction or sinking of the said well No. 8 and the erection of said derrick for the purpose of sinking well No. 9 were the property of complainant, and all the laborers, servants, and employees employed in or about the erection of the said derricks and the sinking of said well No. 8 (but no other well) were paid by defendant out of the moneys of complainant, but the defendant alleges that the said work was so done and the said money was so paid and the said laborers were so employed and the said tools, implements,
42 and supplies were so used by this defendant under an express contract and agreement made and entered into by and on the part of complainant and defendant long prior thereto, and that the same was accepted and received by the complainant as a full and due performance on the part of this defendant of his duty in that behalf.

This defendant denies that in and about the sinking of said well

No. 8 and the erection of the said derrick No. 9 for complainant defendant used or applied machinery, goods, or chattels of complainant of the value of $6,000.00 or thereabouts, or that said machinery, goods, and chattels so applied by defendant in and about the sinking said well No. 8 exceeded the sum of $3,000.00, and denies that he expended of the moneys of complainant in or about said last-mentioned derrick the sum of $1,500.00 or thereabouts or any sum in excess of the sum of $600.00.

And this defendant, further answering, denies that by reason of the premises or the acts of the defendant in and about procuring the execution of the said lease of and from the said Tanner, as alleged in the bill of complaint herein, or at all to this defendant, this defendant now holds or ever held the estate, rights, or privileges vested in this defendant by or under said lease in trust wholly or otherwise for the complainant, or that said lease or any right, estate, or privileges acquired thereunder by this defendant by the terms thereof were to be assigned, set over, or transferred to the complainant, or that complainant thereby acquired any rights thereto whatever.

And defendant further denies that on or about the 20th day of December last past or at any other time or times this defendant, with the intent to defraud or deceive complainant, made or subscribed a certain or any paper or writing whereby and wherein this
43 defendant let and demised to complainant the S. W. ¼ of the N. W. ¼ of section 23, township 19 S., of R. 69 west, or any other tract or parcel of land; but this defendant, on the contrary, alleges the truth to be that the said indenture of lease so made on the 20th day of December, 1886, was made and entered into by and between the said complainant and defendant in good faith, with full knowledge on the part of the complainant of all the facts set forth in the bill of complaint herein respecting the making and execution of the said indenture of lease by said Tanner to this defendant, and with notice of the rights of this defendant thereto by virtue of an agreement between said Tanner and this defendant made and entered into long prior to his employment by complainant, and the same was a modification of the terms and conditions of a certain other lease and demise, dated October 12th, 1886, made and entered into by and between complainant and this defendant of and respecting the said premises in the said indenture of lease of the date of December 20th, 1886, described; and this defendant alleges that said lease of the date of October 12th, 1886, and the said lease of the date of December 20th, 1886, were made and entered into by and between the parties thereto and especially by and on the part of this defendant honestly and in good faith and without any purpose or intent to defraud or deceive complainant, and that the making and execution of said leases nor either thereof did defraud or deceive complainant in any manner whatever.

And this defendant alleges that prior to and at the time and times of the date of said last-mentioned indentures of lease so made by this defendant to complainant this defendant had full power, right, and authority to make and execute said leases and each thereof and

to confer and convey all the rights, estate, and privileges therein
44 and thereby expressed to be conferred and conveyed by this
defendant to the complainant thereby, and that said indentures of lease did and still do fully confer and convey to the complainant all said estate, rights, and privileges so therein expressed and contained, and that all the rights, estate, claim, and interest said complainant now has or ever had in or to said premises in said indentures of lease described is now and ever has been held by and under the said indentures of lease dated respectively October 12th, 1886, and December 20th, 1886, made by this defendant to the complainant and none other whatever.

And this defendant, in that behalf further answering, denies that to deceive or defraud complainant or otherwise or at all he caused or procured the said indenture of lease dated December 20th, 1886, to be falsely dated on the 12th day of October; but the defendant alleges that each of said indentures of lease were made and executed on the day of their respective dates, and each thereof bears the true date of the making and execution thereof and no other date whatever; and this defendant denies that after the execution of the said indenture of lease dated the 20th day of December, 1886, he executed any other lease to complainant of the said premises in the alleged first lease made on said last-mentioned day; but this defendant alleges the truth to be that there was but one lease made by and between the said defendant and complainant on the 20th of December, or about that day, of said premises or any part thereof in said indenture of lease described, and that said last-mentioned lease was actually made and executed on the said 20th day of December, to more fully describe the premises set forth and described in the indenture of lease made and executed by this defendant to the
45 complainant for the greater portion of said premises on the 12th day of October, 1886, and for greater certainty as to the description of said premises and for no other purpose whatever. The defendant admits that the said indenture of lease, made, executed, and delivered by him to complainant on the 20th day of December, 1886, contained, among other terms, covenants, and conditions, the express condition and agreement that in case complainant failed to keep and perform the covenants and agreements therein by it to be kept and performed, then the said lease should be null and void and surrendered to this defendant.

But defendant denies that said complainant has kept and performed all and singular the conditions, covenants, and agreements set forth and contained in said indenture of lease to be kept and performed by and on the part of complainant, but alleges that complainant failed to keep and perform the terms and such conditions of said lease in this, to sink well No. 9 to the depth of 1,200 to 1,500 feet or to find therein oil in paying quantities on or before the 1st day of May, 1887, and also complainant failed to erect upon said premises a third derrick; that by reason of said defaults and failures on the part of complainant said indenture of lease made by this defendant to complainant, dated October 12th, 1886, and December 20th, 1886, respectively, became, by the

terms and conditions thereof, and are null and void and, by the express terms and conditions thereof, should be surrendered and delivered up to this defendant by the complainant, together with all the rights and privileges therein and thereby conferred; but defendant alleges that said complainant, in direct violation of its said covenants and agreements in that behalf made, refused and still does refuse to surrender or deliver up said premises in said indentures of lease contained and every part and portion thereof to this defendant. Defendant admits that

46 said Isaiah Josephi, the then vice-president of complainant, came to the said county of Fremont as alleged in the bill of complaint, and that said Josephi, as such vice-president of said complainant, then and there consummated and concluded the said indenture of lease made and executed by this defendant to complainant and dated the 20th day of December, 1886, but this defendant denies that said vice-president or the complainant then or there for the first time learned of the making and execution of the said indenture of lease by said Tanner to this defendant and dated on the 6th day of October, 1886, and denies that said Josephi, as such vice-president or otherwise, then or there or at all ever demanded of this defendant that he should assign the said lease or any part thereof to complainant or at all, or that said Josephi or the complainant then or at any other time demanded or claimed such or any right therein or demanded of defendant that he assign any of the rights, estate, or privileges conferred and conveyed in and by said lease so made by said Tanner to this defendant, or any part thereof, and denies that this defendant falsely caused said Josephi to believe that he, defendant, before accepting the position of general manager of said complainant company or before entering into the services of said company, had obtained from said Tanner an agreement for the purchase or lease of said lands of said Tanner, or by any false representations concerning the rights of this defendant to demand and receive of and from said Tanner a lease or demise of said land this defendant promised the said Josephi, as such vice-president, to accept or assume to accept the said or any indenture of lease as alleged in the bill of complaint herein or otherwise or at all.

But this defendant alleges the truth to be that the said alleged false representations respecting the rights of this defendant

47 in and to the said lands so leased by said Tanner to him on the 6th day of October, 1886, were in fact true, and that said Josephi and also said complainant well knew the same to be true, and that this defendant long prior to his entering into or being in anywise employed by the said complainant company had procured an agreement in writing from said Tanner whereby said Tanner had covenanted and agreed with defendant to sell all said lands so let and demised by said Tanner on the 6th day of October, 1886, to this defendant, and that said agreement was in full force prior to and during all the time this defendant was in the employ of the complainant; and this defendant further alleges the truth to be that he did use the tools, implements, men, and money of complainant

to sink well No. 8 and to erect derrick No. 9, and that he did so for the complainant under and in pursuance of the terms of the said indenture of lease made by this defendant to complainant on the 12th day of October, 1886, and that in doing so this defendant acted under and by the direction and authority of complainant; and this defendant further denies that said Josephi acted without the authority of complainant in or about accepting the said leases dated October 6th and December 20th, 1886, or either of the same, and denies that complainant has not waived and renounced its rights to have the said lease so executed to defendant by said Tanner on October 6th, 1886, assigned and transferred to complainant; but defendant alleges the truth to be that said Josephi, as such vice-president of said company, was then and there duly empowered and authorized to negotiate for, execute, and accept the said indentures of lease to said company made by said defendant, dated October 12th and December 20th, 1886, and each of them, and that said complainant accepted and duly ratified the said acts and doings of said Josephi, as its vice-president and agent in its behalf, to procure said leases from this defendant, and
48 that said complainant has never repudiated or rejected the acts and doings of its said vice-president in and about procuring or accepting said leases or otherwise or at all, but, on the contrary, said complainant has, at all times since the date thereof, ratified and confirmed the acts of said vice-president in that behalf and still does; and denies that defendant sunk two wells on the 2½ acres in said Tanner lease mentioned, but alleges he sunk one, and that he did so by the written consent of said Tanner; and admits that he is extracting large quantities of oil therefrom, but denies that he sunk said wells with the intent or purpose of diminishing the yield of oil in well No. 8 of complainant or with any other purpose or intent to injure the complainant; and denies that extracting such oil from said well does in any manner diminish the yield of oil in said well No. 8.

This defendant admits that he caused to be filed a complaint against certain persons in the bill of complaint set forth, but denies that his purpose or intent in doing so was to harm or in any manner injure the complainant or any of the persons in its employ, but, on the contrary, alleges that the facts set forth and alleged in said criminal complaint were and are true; and defendant admits that on or about the 7th day of June, 1887, he caused to be served a written notice upon complainant to the effect that because of the failure to comply with and perform the covenants and agreements contained in said indentures of lease by defendant to complainant of the date of October 12th and December 20th, 1886, the complainant had forfeited its right to further occupy, possess, or enjoy the said premises so let and demised to it by defendant as aforesaid, and that because of such default and failure on the part of complainant the said indentures of lease became and are null and void
49 and the said premises of right should be surrendered up and possession thereof delivered to this defendant. Defendant denies that he is what is commonly or otherwise called or known as a

bad man, or that he is prone to violence, brawls, or breaches of the peace, but, on the contrary, defendant alleges the truth to be that he has resided in Fremont county for the last past six years, during all which time he has been extensively engaged in various branches of business in said county with the people thereof, and that he has never had any personal difficulty with any person or persons or been engaged in brawls or breaches of the peace save and except on one instance, namely, on or about the first day of May, 1887, in which instance he was wantonly and maliciously attacked by one S. A. Josephi with a loaded gun, commonly called a six-shooter, and but for the interference of other persons then and there said Josephi would have killed and murdered this defendant; that the said Josephi verified the bill of complaint filed herein and who is now and was at the time of said attack upon the defendant the general manager of complainant, and that said S. A. Josephi was, because of such attack and attempt upon the life of this defendant, duly complained against, arrested, and, after a full hearing of all the facts, duly bound over by one George W. Clelland, a justice of the peace in and for said county, in the penal sum of $2,000.00 to answer any indictment which the grand jury may prefer against him upon said charge to kill and murder this defendant.

Denies that, under any pretense or otherwise, this defendant ever intended or contemplated committing any act of violence or breach of the peace in or about taking possession of the said premises in the said leases described, made by defendant to complainant, or that defendant does now or at any time did contemplate or intend to take or attempt to take forcible possession of said premises or any part thereof, or that defendant now or at any time has intended or contemplated breaking into or breaking down or destroying any of the derricks or other erections, buildings, or improvements owned or erected by complainant on said premises, or in any other manner molesting the said property or possessions of said complainant; and this defendant, in this behalf further answering, alleges—

That on or about the year 1882 the Arkansas Valley Oil and Land Company explored for and sunk several wells in search of petroleum oil in and upon the following tract of land in the county of Fremont and State of Colorado, to wit, the northeast corner of section (28) twenty-eight, in township nineteen (19) south, of range sixty-nine (69) west, and that in said wells said company found and produced oil in paying quantities therefrom, and that thereafter said company continued its explorations for oil in and upon said tract of land by the sinking of other wells thereon, in which was also found oil in paying quantities; that the fact of the discovery and production of petroleum oil by said Arkansas Valley Oil and Land Company was widely and generally known throughout the entire State, but more especially did such fact become known in the county of Fremont, where said company found and produced said oil.

That said company has continued to make other explorations in the immediate vicinity of its said first wells, and has at all times

since been actively engaged in prosecuting its said work, and has ever since the date first aforesaid produced and still is producing large quantities of petroleum oil from said wells, and that said company about the year 1883 erected works for refining the said oil in said county of Fremont and has refined all of its oil so
51 produced; that thereafter, about the year 1882, the corporation known and called the Land Investment and Coal and Oil Mining Company was organized under the laws of the State of Colorado in that behalf made and provided; that the objects and purposes of said corporation were to explore for, produce, and refine petroleum oil in the county of Fremont, in the State of Colorado; that this defendant, on or about the 13th day of March, 1883, became a member of said corporation by the purchase of 35 shares of the capital stock thereof, and ever since he has been such member thereof, and that on or about the 1st day of January, 1883, said company proceeded to and did sink a number of wells for the production of such oil on the following tracts of land, to wit, N. E. ¼ of sec. 17 and N. W. ¼ S. E. ¼ of said sec. 17, in township 19 south, of range sixty-nine west, the same being then, ever since, and still is the property of one Edwin Lobach, mentioned in the bill of complaint herein as the land leased to complainant, and said tract of land and said wells are in the immediate vicinity of the said lands so leased to this defendant by said Tanner, and that afterwards, on or about the — day of ——, 1883, the said The Land Investment and Coal and Oil Mining Company, and while this defendant was a member thereof and thereby was entitled to and did know that oil in paying quantities was found and produced in and from said wells, said last-mentioned company sunk other wells upon the lands of one James A. McCandless, in the immediate vicinity of the said lands so leased by said Tanner to this defendant on the 6th day of October, 1886; that in each of said wells so sunk oil was found and produced in paying quantities, and that such fact was then and there well known, and the fact that oil was so found by said last-named company as aforesaid in all said wells was well known to this
52 defendant at the time the same was so found, and that the finding and production of such oil by said company was then and there made known and published and thereby became and was generally known throughout the State of Colorado, and more especially such fact became and was generally known to the people of the said county of Fremont.

And this defendant, in the behalf further answering, alleges that by reason of his knowledge and belief, derived by him from the said explorations for and the finding and production of oil in paying quantities by said Arkansas Valley Oil and Land Company and the explorations and developments made in that behalf by the Land Investment and Coal and Oil Mining Company upon the lands of the said Edwin Lobach and James A. McCandless, and the finding and production of oil therein and thereon, as aforesaid, this defendant was then and there thereby induced to and did then and there believe that the lands adjacent thereto probably contained oil in paying quantities, and that, by reason of such belief that said lands

adjacent to the said discovery of oil contained oil in paying quantities, this defendant, on or about the 19th day of Nov., 1883, projected and formed the intention and design of engaging in the oil business, and to produce and refine the same, in the county of Fremont and State of Colorado; and in pursuance of that purpose and design, and to carry out and effectuate the same, this defendant, on the 19th day of November, 1883, made and entered into an agreement in writing with said James A. McCandless whereby said McCandless leased and demised, for a valuable consideration then and there paid by this defendant to said McCandless, the tracts of land in said indenture of lease set forth and described to defendant, with the right on the part of defendant to explore the said lands for oil by the sinking of wells thereon for that purpose;
53 which said indenture of lease is in the words and figures following, to wit:

"*Oil Lease.*

"Agreement made this nineteenth day of November 1883 between James A. McCandless party of the first part. A. R. Gumaer party of the *the* second part. Witnesseth that the said first party in consideration of the sum of one dollar to him in hand paid by the second party, the receipt of which is hereby acknowledged and of the *of the* agreements hereinafter mentioned to be kept and performed by said second party, have granted, leased and demised and do hereby grant lease and demise unto the said second party his heirs and assigns, all that tract or parcel of land, situate in the county of Fremont, State of Colorado and described as follows to wit: The northwest quarter of section twenty-three in township No. nineteen south of range sixty-nine west being one hundred and sixty acres more or less according to Government survey. With the exclusive right to dig, bore and mine for and gather all oil and gases, coal and rock and all other valuable mineral substances found in solution or otherwise in and upon the aforesaid premises. To have and to hold the same for the term of twenty years from this date, or as long as oil is found in paying quantities; also, the right of way to enter upon said premises for the purpose of operating mining or removing said oil and gases therefrom, and for the laying of pipes under and on said surface, for transportation of oil and gas and full power to erect all necessary buildings and tanks upon said premises, for the purpose of procuring and storing said oils and gases with the full right to the said second party of appropriating to his own use all of the oils and gases found upon said premises during said term. In consideration whereof the said second party agrees to give the said first party one-twelfth part of the
54 oil produced and saved from said premises, to be delivered on said premises to the party of the first part. The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated. The party of the second part covenants to commence operations for said mining and boring pur-

poses and to prosecute the same on some portion of the above-described premises, or within one-quarter mile of the same within six months from the date hereof or the party of the second part, shall within one year from said date commence and prosecute with reasonable diligence, delays by unavoidable accidents excepted, the sinking or boring of one well to the depth of 1,200 to 1,500 feet, unless oil in paying quantities is sooner found (on said premises or within said distance thereof) provided the times and each of them above mentioned shall be extended at the option of the party of the second part upon payment to the party of the first part of the sum of twenty dollars, per month, payable monthly until such work shall be commence- and such work then shall be prosecuted with reasonable diligence, delays by unavoidable accidents excepted. Failure of the party of the second part to comply with the terms of this clause shall nullify the lease and render it void. In case an encumbrance of any kind shall appear against the above-described premises, or any claim which does or might interfere with the full free, and uninterrupted enjoyment and use thereof, by the said second party, as aforesaid, said first party agrees to pay off, discharge and satisfy the same. In default thereof said second party may satisfy the same by applying in payment thereof all oil reserved to said first party, as above mentioned until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the afore-
55 said premises all timber necessary to be used for derricks and for fuel, for drilling and operating all wells under this lease and the right of way is hereby granted to the party of the second part, to build, contract, lay down, and maintain ditches and pipes in and upon said premises to convey water to the works of said party of the second part for use therein and thereabout. Said second party shall have the right and power to remove their machinery, derricks, tools and fixtures, and any other property at any time from said premises. If the party of the second part fails to keep and perform the covenants and agreements herein, by the second party to be kept and performed, then this lease shall be null and void and surrendered to the party of the first part. The foregoing stipulations and agreements shall apply to and bind the heirs, executors, administrators and assigns of the respective parties hereunto.

"Given under the hands and seal of the parties hereto.

"JAMES A. McCANDLESS. [SEAL.]
"A. R. GUMAER. [SEAL.]"

"STATE OF COLORADO, } ss:
"*Fremont County*, }

"I, Wm. E. Johnson, a notary public in and for said county, in the State aforesaid, do hereby certify that James A. McCandless and A. R. Gumaer, who are personally known to me to be the persons — name- *is* subscribed to the annexed lease, appeared before me this day in person and acknowledged that they signed, sealed, and de-

livered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

"Given under my hand — seal this 19 day of November, A. D. 1883.

"[Notarial Seal of Wm. E. Johnson.]

"WM. E. JOHNSON,
"*Notary Public.*"

56 Which said indenture of lease is now and has been at all times since its execution and delivery in full force.

That, in pursuance of the terms and conditions, among others, of said lease to be kept and performed by this defendant, defendant has paid to said McCandless the following sums, to wit, which are endorsed upon said indenture of lease:

"Rec'd of A. R. Gumaer three hundred dollars, payment in full of all demands up to Feb. 19, 1886, on the within lease.

"Dated 2, 20, '86.

"JAMES A. McCANDLESS."

"Mc'h	20, '86.	Payment	----------	$20"
"Apr.	20, "	"	----------	20"
"May	20, "	"	----------	20"
"June	20, "	"	----------	20"
"July	20, "	"	----------	20"
"Aug.	20, "	"	----------	20"
"Sept.	20, "	"	----------	20"
"Oct.	20, "	"	----------	20"

And this defendant, in that behalf further answering, alleges that by reason of his knowledge and belief derived by him from the said explorations in that behalf made by the Arkansas Valley Oil and Land Company and the discovery by said company of oil in and upon lands adjacent thereto, and also by the developments and explorations made by the Land Investment and Coal and Oil Mining Company upon the lands of said Edwin Lobach and McCandless and the finding and production of oil therein and thereon in paying quantities, this defendant was thereby induced to and did believe that the said tracts of land adjacent to said discovery of oil by each of said companies so as aforesaid contained oil in paying quantities; that by reason of such belief and to carry out and effectuate his said design and purpose of entering into the oil business and the
57 production and refining the same for market in the county of Fremont and State of Colorado and in pursuance of such design and to carry out the same this defendant, on the 10th day of December, 1885, made and entered into an agreement in writing with said Stephen J. Tanner whereby said Tanner, for a valuable consideration then and there paid to him by this defendant, then and there covenanted, promised, and agreed and bound himself to sell and convey unto this defendant all the lands in the said indenture of lease set forth and described in the bill of complaint, together with

other and different lands and adjoining the said leased lands, upon certain terms and conditions in said indenture of lease set forth and contained to be kept and performed by and on the part of this defendant, and said agre-ment granted the right, among other things, to this defendant to sink wells thereon and therein for the discovery and production of oil, which said agreement was duly recorded in county clerk and record-'s office, in Book 27, at pages 545 and 546 thereof, said agreement being in the words and figures following, to wit:

"This agreement made this 10th day of December A. D. 1885, by and between Stephen J. Tanner and Agustus R. Gumaer both of the county of Fremont in the State of Colorado. Witnesseth that said Tanner for and in consideration of the sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, and confessed, hereby agrees that he will convey to said Agustus R. Gumaer by good and sufficient warranty deed with all usual covenants, the following-described real estate to wit:

"The south half of section fifteen (15) and the north half of the northeast quarter of section twenty-two (22) and the southwest quarter of the northeast quarter of section twenty-two (22) all in township nineteen (19) south of range sixty-nine (69) west
58 of the sixth (6th) principal meridian the county of Fremont in the State of Colorado being four hundred and forty (440) acres of land more or less if the said Agustus R. Gumaer shall at any time not more *more* than four months after the date of this agreement, pay to said Stephen J. Tanner or deposit in the Exchange Bank of Canon City to the credit of said Stephen J. Tanner the sum of twenty-four thousand dollars ($24,000) as payment therefor subject to the further conditions hereinafter set forth. But if said Agustus R. Gumaer at any time not more than four months after the date hereof shall elect to go upon said premises or any part thereof, and shall within the time aforesaid, begin the work of preparation for sinking one or more wells for oil upon said premises, then from the date of such commencement of work the contract above set forth shall cease and determine and instead thereof, for the consideration above mentioned and in further consideration of such beginning of such work, said Stepehn J. Tanner hereby agrees and covenants that if said Agustus R. Gumaer, on or before the 10th day of December A. D. 1886 shall pay to said Tanner or shall deposit to the credit of said Tanner in said Exchange Bank of Canon City, the sum of thirty-four thousand ($34,000) dollars as payment therefor—he, said Stephen J. Tanner, will convey to said Agustus R. Gumaer, the land above and hereinbefore described by warranty deed, with all usual covenants of title. It is mutually understood by and between the parties hereto that if said Gumaer shall, as aforesaid, commence the work of sinking a well or wells, and shall not thereafter choose to purchase said land on the terms specified he may, within any reasonable time (as soon as practicable) after said December 10th A. D. 1886 remove from said land all fixtures

and improvements which he, said Gumaer, shall have put
59 thereon including casing of wells as well as all other things that can be removed. And it is further agreed that all covenants herein shall bind and shall be enforceable in favor of the heirs, executors, administrators and assigns of the parties hereto the same as they affect the parties themselves—

"In witness whereof said Stephen J. Tanner has hereunto set his hand and seal the day and year first above written.

"STEPHEN J. TANNER. [SEAL.]"

"STATE OF COLORADO, } ss:
"*County of Fremont,* }

"I, Charles E. Waldo, a notary public in and for said county, in the State aforesaid, do hereby certify that Stephen J. Tanner, who is personally known to me to be the person whose name is signed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said agreement as his free and voluntary act and deed for the uses and purposes therein set forth.

"Given under my hand and seal this 10th day of December, A. D. 1885.

"[Notarial Seal of Chas. E. Waldo.]

"CHAS. E. WALDO,
"*Notary Public.*"

That this defendant alleges that prior to the first day of April, 1886, he commenced the work of sinking a well for the production of oil upon the said premises set forth and described in said agreement last above described, and this defendant did other work upon said premises with the view of exploring the said lands for the discovery of oil therein in compliance with the terms and conditions of said agreement, among others, to be kept and performed by and on his part and in all respects fully complied with and
60 duly performed all and singular the acts and things to be done and performed by him in that behalf.

And this defendant further alleges that soon after commencing the said work of sinking wells upon said lands in the said agreement last above described between said Tanner and this defendant it was discovered that oil, if found in said well so commenced to be sunk by this defendant upon said lands of said Tanner, could not be sold in the crude state to any profit, and that to realize a fair profit therefrom this defendant must be prepared to refine and refine the same, as no sale for crude oil in large quantities could be made in the vicinity of said projected well of this defendant upon said Tanner's land so as aforesaid, and in consequence of such inability to make sale or probable inability to do so of the said crude oil which might be found in and produced from said well so commenced to be sunk by this defendant upon the said lands of said Tanner so as aforesaid this defendant temporarily ceased and quit his said work on said well for the purpose of preparing to refine and refine the said oil when produced from said premises.

And this defendant alleges that said agreement so made and entered into by and between this defendant and said Tanner continued and remained in full force and without any change or modification of any of the terms or conditions therein contained from the 10th day of December, 1885, until the 6th day of October, 1886; that at that day and while said agreement was in full force as aforesaid and with the purpose and intent of the respective parties thereto of changing and modifying the terms and co-ditions in said agreement contained and without any purpose or intent on the part of either of the parties thereto of in any manner abandoning or nullifying the said agreement so made by and between this defendant
61 and said Tanner on the 10th day of December, 1885, but, on the contrary, to carry out and effectuate the objects and purposes of this defendant to produce and refine oil as aforesaid, the said Tanner made, executed, and delivered the said indenture of lease of the date of October 6th, 1886, for the said lands as set forth and described in the bill of complaint, and the said Tanner then and there, for a valuable consideration paid him by this defendant, covenanted and agreed to and then and there did renew and extend the time for the purchase of said tracts of land in said agreement of the date of December 10th, 1885, from December 10th, 1886, to the first day of May, 1887, upon the same terms of purchase as in the said agreement dated December 10th, 1885, and that this defendant then and there paid to said Tanner a valuable consideration for such renewal and extension of the time aforesaid for the purchase by this defendant of all said tracts of land; that said contract for such renewal and extention of the time for the purchase of all said tracts of land was then and there written and endorsed upon the back of the said original agreement of the date of December 10th, 1885, and then and there executed by said Tanner, and is in the words and figures following, to wit:

"Know all men by these presents, that for and in consideration of the sum of one dollar to me in hand this day paid by A. R. Gumaer, the receipt whereof, is hereby acknowledged and confessed I, Stephen J. Tanner do hereby extend the time in the foregoing instrument of writing mentioned for the payment of $34000 therein mentioned to be paid by the said A. R. Gumaer to and until the first day of May 1887, and do agree that the said instrument shall be in full force and of binding effect until said May first 1887. Provided always that I hereby reserve to myself all crops which may be growing upon the lands herein mentioned at said
62 May 1st 1887 with the right to gather and market the same.

"Witness my hand this 6th day of October, A. D. 1886.

"STEPHEN J. TANNER. [SEAL.]"

"STATE OF COLORADO, } ss:
"*Fremont County*, }

"I, Samuel H. Baker, a notary public in and for said county, in the State aforesaid, do hereby certify that Stephen J. Tanner, who is personally known to me to be the person whose name is subscribed

to the foregoing agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said agreement as his free and voluntary act and deed for the uses and purposes therein set forth.

"Given under my hand and notarial seal this 6th day of October, A. D. 1886.

"[Notarial Seal of Samuel H. Baker.]

"SAMUEL H. BAKER,
"*Notary Public.*"

And this defendant further alleges that on the 30th day of April, 1887, and while the said agreement made and entered into by and between the said Stephen J. Tanner and this defendant, dated December 10th, 1885, was in full force and effect by the extension there*fo* so as aforesaid, this defendant and said Tanner made and entered into another agreement respecting the sale and leasing of the said premises in the said agreement last above stated, whereby the said Tanner, in consideration of the payment to him in hand by this defendant of the full sum of $3,500 in cash, and the further agreement on the part of this defendant to pay to said Tanner thereafter the further sum of $49,500.00, among other things to be done and performed by and on the part of this defendant in that behalf, bound himself to sell and convey all the premises in
63 the said agreement of December 10th, 1885, set forth and described, and that said agreement, so made on the 30th day of April, 1887, was so made for and is a modification and continuation of the said agreement of December 10th, 1885, and that said agreement of April 30th, 1887, is in full force and existing as a valid and subsisting agreement for the purchase of all said tracts of land by and between said Tanner and this defendant.

And this defendant further alleges that in order to carry out and accomplish his said design to engage in the business of procuring oil lands and boring wells for the production of oil and refining the same, entertained by him before and at the time of the making and execution of the said several contracts with said James A. McCandless and Stephen J. Tanner for the leasing and purchase of the said tracts of lands hereinbefore set forth and described, this defendant proceeded to and did acquire the title to a suitable tract of land adjacent to the said tracts of land which he had leased and contracted to purchase of the said McCandless and Tanner for the purpose of erecting thereon an oil refinery, and that he, defendant, prosecuted the said work of erecting the said oil refinery with all diligence, and that the same was completed by defendant on or about the 20th day of June, 1887; that the capacity of said refinery is 160 barrels per day, and defendant alleges that said oil refinery has been run every day to its fullest capacity since the same was completed, to wit, about the 20th day of June, 1887, and is still in full operation.

That all the oil thus refined by this defendant as aforesaid was produced by him from wells sunk by defendant in the immediate vicinity of said refinery; that only a part of the oil thus refined is

produced upon the lands mentioned in said lease to defendant by said Tanner.

64 And this defendant further alleges that the production of oil by him from the wells sunk by this defendant in that vicinity exceeds the capacity of said refinery about 110 barrels per day, and that in consequence thereof this defendant and said Florence Oil Company are now actively engaged in procuring the material, machinery, etc., for the enlargement of the said refinery and thereby increase the capacity thereof to 350 barrels per day of refined oil.

And this defendant in this behalf further alleges the truth to be that the complainant well knew, prior to and at the time of this defendant's entering in the said employment as general manager of the complainant, that he, defendant, was the owner of all the rights, estate, title, and claim to all the said tracts of land so described and set forth in the said written agreements hereinbefore set forth, made, and executed by said McCandless to this defendant, and also that made and executed by the said Tanner to this defendant on the 10th of December, 1885, and that said agreements and each thereof were in full force, and that by the terms and conditions thereof and each thereof this defendant had held and possessed the right, power, and authority to sink wells thereon and explore for and produce oil therefrom, and that by the terms and conditions thereof the said McCandless and said Tanner and each of them were firmly held and legally and equitably bound by the terms of said agreements that the said McCandless had duly leased and demised said tracts of land to this defendant, and that said Turner had agreed and bound himself to sell and convey to this defendant the said several tracts of land respectively described in said agreement, and especially all the said lands set forth and described in the said lease made by said Tanner to this defendant of the date of October 6th, 1886, and

65 that the same were part and parcel of the identical tracts set forth and described in the said agreement made by and between said Tanner and this defendant on the 10th day of December, 1885, and this defendant alleges that the complainant, with full knowledge and notice of all the facts aforesaid respecting the said several contracts so made and entered into by and between said McCandless and this defendant and Tanner and this defendant, complainant then and there employed this defendant as its general manager; and this defendant, further answering, alleges after the execution and delivery by said Tanner to this defendant of said lease of the date of October 6th, 1886, namely, on the 12th day of October, 1886, this defendant made and entered into an agreement with the complainant whereby, in consideration of keeping and performing the said several terms, conditions, and agreements in the agreements made by and between this defendant and the complainant and dated October 12th, 1886, this defendant then and there made and executed the said indenture of lease to the complainant, whereby this defendant then and there granted to the complainant all the estate, right, title, and claim to all the said premises in said

several indentures of lease described; which said indenture of lease is in the words and figures following, to wit:

"*Oil Lease.*

"Agreement made this twelfth day of October 1886 between A. R. Gumaer party of the first part and Colorado Oil Company, party of the second part; witnesseth that the said first party in consideration of the sum of one dollar to him paid by the second party the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party, have granted, leased and demised and do hereby grant, lease and demise unto the said second party its successors and assigns all that tract or parcel of land situate in
66 the county of Fremont, State of Colorado and described as follows, to wit: The southwest quarter of the northwest quarter (S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$) of section twenty-three (23) township nineteen (19) south of range sixty-nine (69) west. With the exclusive right to dig bore and mine for and gather all oils and gases, coal and rock and all other valuable mineral substances found in solution or otherwise in and upon the aforesaid premises. To have and to hold the same for the term of twenty years from this date, or as long as oil is found in paying quantities, also the right of way to enter upon said premises for the purpose of operating, mining or removing said oil and gases therefrom, and for the laying of pipes either under or on said surface for transportation of oil and gas and full power to erect all necessary buildings and tanks upon said premises for the purpose of procuring and storing said oils and gases with the full right to the said second party of appropriating to its own use all of the oils and gases found upon said premises during said term. In consideration whereof the said second party agrees to give the said first party one-tenth ($\frac{1}{10}$) part of the oil and gases produced and saved from said premises to be delivered on said premises to the party of the first part. The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not to disturb any tillable land unless absolutely necessary to carry out the terms of this lease. In case an encumbrance of any kind shall appear against the above-described premises, or any claim which does or might interfere with the full free and un-terrupted enjoyment and use thereof by the said second party as aforesaid, said first party agrees to pay off, discharge and sat-
67 isfy the same. In default thereof said second party may satisfy the same by applying in payment thereof, all oil reserved to said first party as above mentioned until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks and for fuel for drilling and operating all wells under this lease; and the right of way is hereby granted to the party of the second part to build, construct, lay down and maintain ditches and pipes in and upon said premises to convey water to the works of

said party of the second part, for the use therein and thereabouts. The said second party hereby agrees to sink two (2) wells and complete three (3) derricks on or before May 1st 1887 on the following-described property, to wit; one to be on the S. W. ¼ S. W. ¼ sec. 15, and the others to be on either the N. E. ¼ N. E. ¼ sec. 22, or the S. E. ¼ S. E. ¼ sec. 15 t'w'p 19 S. R. 69 W. Said wells to be sunk subject to the conditions of a certain lease from Stephen J. Tanner to A. R. Gumaer, which lease is recorded in Book 28 pages 368, 369, 370, 371 of the records of Fremont county Colo. said lease providing for one-tenth ($\frac{1}{10}$) royalty. Said second party shall have the right and power to remove their machinery, derricks, tools and fixtures at any time from said premises.

"If the party of the second part fails to keep and perform the covenants and agreements therein by him to be kept and performed then this lease shall be null and void and surrendered to the party of the first part. It is agreed that the foregoing stipulations and agreements shall apply to and bind the heirs executors administrators and assigns of the respective parties hereunto.

"A. R. GUMAER. [SEAL.]"

68 "Witnessed by—
"—— ——."

"STATE OF COLORADO, }
"*Fremont County*, } *ss*:

"I, Charles E. Waldo, — in and for said county, in the State aforesaid, do hereby certify that A. R. Gumaer, personally known to me to be the person whose name is subscribed to the annexed lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

"Given under my hand and seal this twentieth day of December, A. D. 1886.

"[Notarial Seal of Chas. E. Waldo.]

"CHAS. E. WALDO,
"*Notary Public.*"

And this defendant further alleges that upon the consummation of the said agreement last above set forth herein the complainant insstructed this defendant to perform the covenants and agreements to be kept and performed by complainant in respect to sinking one well on said premises, and that this defendant did proceed to sink the said well, which well is known and called well No. 8 of complainant; that in performing the said labor and sinking said well this defendant acted for the complainant and used the tools, implements, and employed and paid the laborers out of his own moneys.

That after all the said work was duly performed as to the sinking of said well No. 8 and the erection of derrick No. 9, and this defendant alleges that the above was all he did for and on behalf of said complainant in and about the performing of its covenants and

agreements contained in said lease of October 12th, 1886,
69 made and executed by this defendant to complainant, and that after the completion of said work, as above stated, the said complainant, with full notice that this defendant claimed to own all the estate, rights, and privileges set forth in the said indenture of lease made October 6th, 1886, by said Tanner to this defendant, and also the right to purchase all said tracts of land in said lease mentioned by virtue of said agreement made by and between said Tanner and this defendant on the 10th day of December, 1885, the said complainant paid this defendant all moneys so advanced by him for and on behalf of complainant in and about the sinking said well No. 8 and the erection of derrick No. 9, as aforesaid, and then and there ratified and confirmed all and singular the acts and doings of this defendant in that behalf done and performed, as well as the acts and doings of this defendant in and about procuring the said lease of and from said Tanner complained of herein; and the complainant also then and there further ratified and confirmed the acts and doings of this defendant in that behalf by modifying and altering the terms of said lease of October 12th, 1886, and then and there made and entered into the said indenture of lease so changed and modified, dated December 20th, 1886, and then and there duly accepted and received the said modified lease after notice of all the facts and circumstances respecting this defendant's estate and rights in and to said premises under and by virtue of the said several agreements made by and between this defendant and said Tanner for the purchase and leasing of said lands; which said indenture of lease, dated December 20th, 1886, is in the words and figures following:

"*Oil Lease.*

"Agreement made this 20th day of December 1886, be-
70 tween A. R. Gumaer party of the first part, and Colorado Oil Company party of the second part; witnesseth that the said first party in consideration of the sum of one dollar to him paid by the second party the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party *have* granted leased and demised and do hereby grant, lease and demise unto the said second party its successors and assigns, all that tract or parcel of land and rights and privileges in and to land situate in the county of Fremont State of Colorado and described as follows to wit; the oil well which has heretofore been sunk on the southwest quarter of section fifteen (15) in township nineteen (19) south of range sixty-nine (69) west in accordance with a lease from said party of the first part of date October 12th 1886 and all rights and privileges in connection with said well, which said Gumaer has in said well and in the land whereon it is located, by virtue of a lease from one Stephen J. Tanner recorded in the records of said Fremont County in Book 28, at pages 368 to 371. Also the right to complete the oil well known as Colorado Oil Company's well number nine (9) which is on an eighty-acre tract of land which consists of the southeast quarter of the southeast quar-

ter of section fifteen (15) and the northeast quarter of the northeast quarter of section twenty-two (22) in township nineteen (19) south of range sixty-nine (69) west of sixth (6th) principal meridian and the right to sink one other well on such part of said eighty-acre tract last above described as said party of the second part shall select, and also all right and privileges and title which said party of the first part has under and by virtue of said certain lease from one Stephen J. Tanner of date October 6th 1886 which is re-
71 corded in the deed records of said Fremont county in Book 28 at pages 368 to 371 in and to a tract of land seventeen (17) rods square whereof said well number nine (9) is the center and in and to another tract of land seventeen (17) rods square whereof the well above specified as hereafter to be located and sunk shall be the center provided that said party of the second part shall not have the right to sink any oil well on any part of the lands last described other than the two wells above specified. And also all right and rights, title and interest which said party of the first part has under the lease hereinbefore described in and to all oil which shall and may be produced and obtained from said two wells last above described and from the well first above described without reference to the land from which said oil shall be obtained, with the exclusive right to dig, bore and mine for and gather all oils and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the premises and property hereinbefore conveyed.

"To have and to hold the same for the unexpired portion of term specified in said lease *recovered* in Book 28 at pages 368 to 371 of Fremont county records. Also the right of way to enter upon said premises for the purpose of operating mining or removing said oil and gases therefrom, and for the laying of pipes either under or on said surface, for transportation of oil and gas and full power to erect all necessary buildings and tanks upon said premises for the purpose of procuring and storing said oils and gases, with the full right to the said second party of appropriating to his own use all of the oils and gases found upon said premises during said term, in consideration whereof the said second party agrees to pay and deliver to said Stephen J. Tanner and to his assigns (or if he or they shall refuse to receive the same, to said party of the first
72 part, or his assigns) all royalty on all oil produced and saved from said premises and wells by said party of the second part to which said Stephen J. Tanner, and his assigns shall be entitled under the lease from said Tanner above described, which is one-tenth of all oil produced and saved from said premises to be delivered on said premises, or if said Tanner shall so require the net market price of said one-tenth part in cash less cost of transportation and marketing the same. The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not to disturb any tillable land unless absolutely necessary to carry out the terms of this lease. In case an incumbrance of any kind does or shall appear against the

above-described premises or any claim which does or might interfere with the full free and uninterrupted enjoyment and use thereof, by said second party as aforesaid, said first party agrees to pay off, discharge and satisfy the same. In default thereof said second party shall satisfy the same by applying in payment thereof, all oil reserved to said first party, as above mentioned until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks for drilling and operating all wells under this lease; and the right of way is hereby granted to the party of the second part to build, construct, lay down and maintain ditches and pipes in and upon said premises to convey water to the works of the said party of the second part, for use therein and thereabouts.

"Said party of the second part hereby agrees to complete said well number nine (9) and to erect a derrick for the second
73 well which is to be sunk on the eighty-acre tract above described, as above set forth, on or before the first day of May, A. D. 1887. Said second party shall have the right and power to remove its machinery, derricks tools and fixtures and any other property at any time from said premises. If the party of the second part fails to keep and perform the covenants and agreements therein by it to be kept and performed then this lease shall be null and void and surrendered to the party of the first part. It is agreed that the foregoing stipulations and agreements shall apply to and bind the heirs, executors, administrators and assigns of the respective parties hereunto and the successors of said party of the second part.

"A. R. GUMAER. [SEAL.]
"COLORADO OIL COMPANY, [SEAL.]
"By ISAIAH JOSEPHI, *Vice-Pres.*

"Witnessed by—
"CHAS. E. WALDO."

"STATE OF COLORADO, }
"*Fremont County,* } ss:

"I, Charles E. Waldo, a notary public in and for said county, in the State aforesaid, do hereby certify that A. R. Gumaer, who is personally known to me to be the identical person whose name is subscribed to the foregoing lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said lease as his free and voluntary act and deed for the uses and purposes therein set forth.

"Given under my hand and notarial seal this 20th day of December, A. D. 1886.

"[Notarial Seal of Chas. E. Waldo.]

"CHAS. E. WALDO,
"*Notary Public.*"

74 And this defendant alleges that the complainant has at all times since the making and execution of said lease of October 12 and December 20th, 1886, kept and retained and still does keep and retain, possesses, and enjoys all the estate, rights, powers, and privileges granted and conferred by this defendant to complainant under and by virtue of said lease, and has retained, possessed, and enjoyed all the rents, profits, and emoluments derived therefrom; and this defendant denies all fraud, deceit, and deception in the said bill of complaint charged; without —, that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matter- and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be herein dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

(Signed) JNO. M. WALDRON,
" A. MACON,
Solicitors for Defendant A. R. Gumaer.

(Endorsed:) 2161. United States circuit court, district of Colorado. The Colorado Oil Co. *vs.* Agustus R. Gumaer & The Florence Oil Co. Answer of Agustus R. Gumaer. Filed Sept. 12, 1887. (S'g'd) William A. Willard, clerk. John M. Waldron & A. Macon, att'ys for def't.

75 And afterwards and on, to wit, the 3rd day of October, A. D. 1887, came again the said complainant, by its solicitors aforesaid, and filed in said court and in said cause its replication to the answer of Agustus R. Gumaer, heretofore filed herein; and the said replication is in words and figures as follows, to wit:

Replication to Answer of Gumaer.

In the Circuit Court of the United States for the District of Colorado. In Equity.

COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER, THE FLORENCE OIL COMPANY.

The replication of the said plaintiff to the separate answer of Agustus R. Gumaer, one of the said defendants.

This repliant, reserving all and every exception which can be taken to the manifold insufficiencies of the said answer, for replication thereto saith that it will aver and prove its said bill to be true, certain, & sufficient in law to be answered unto, & that the ans- of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter in the said answer contained material in law to be replied unto, confessed

and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and prays as in & by the said bill of complaint it hath already prayed.

(Signed) COLORADO OIL COMPANY,
By WELLS, McNEAL & TAYLOR, *Its Solic.*

76 Endorsed: C. C. 2161. Colorado Oil Co. *vs.* Agustus R. Gumaer *et al.* Replication to answer of Gumaer. Filed Oct. 3, 1887. William A. Willard, clerk.

And afterwards and on, to wit, the 6th day of February, A. D. 1888, before the clerk of said court, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Default of Florence Oil Company.

THE COLORADO OIL COMPANY *vs.* AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY.	2161. In Chancery. Bill for an Injunction and for Other Relief.

At this day comes the said complainant, by J. G. Taylor, Esq., its solicitor, and files herein its præcipe for entry of judgment *pro confess-* against the said defendant, The Florence Oil Company.

And it now appearing that the said defendant hath been duly served with subpœna herein and the time allowed by law and the rules to appear herein having since expired and the said defendant still failing to file herein its appearance as by law and rules required—

Therefore it is ordered that the said bill of complaint and the matters and things therein alleged be taken as confessed against the said defendant, The Florence Oil Company.

77 And afterwards and on, to wit, the 29th day of March, A. D. 1888, there was opened, published, and filed in said court and in said cause the depositions of Aaron C. Henderson, Jesse Frazer, Charles P. Lefever, Amasa W. Lucas, and Simeon A. Josephi on behalf of complainant, and the said depositions are in words and figures as follows, to wit:

Depositions Henderson et al. Behalf Complainant.

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
against
AGUSTUS R. GUMAER, FLORENCE OIL COMPANY.

To the above-named defendant, Agustus R. Gumaer, and to Augustus Macon, Esq., his solicitor:

Please take notice that the depositions *de bene esse* of Simeon A. Josephi, Charles Lefever, Jesse Frazer, James A. McCandless,

Stephen J. Tanner, Aaron C. Henderson, Amasa W. Lucas, and Agustus R. Gumaer, who severally reside more than one hundred (100) miles from the city of Denver, where the court at which the above-entitled cause will be tried is to be held, will be taken in behalf of the plaintiff in the above-entitled cause, to be read in evidence on the final hearing thereof at the office of Charles E. Waldo, Esq., in the town of Canon City, in the county of Fremont and State of Colorado, on the 1st day of November, A. D. 1887, commencing at the hour of 10 in the morning of said day and thence continuing from day to day at the same place, or as the officer before whom the said depositions shall be taken may appoint, until the whole of the said witnesses, or so many of them as attend for that purpose,
78 shall be examined and their depositions completed; and you are notified to attend and cross-examine the said witnesses if you see fit so to do.

Dated this 24th day of October, A. D. 1887.

Very respectfully, &c.

(Signed) E. T. WELLS,
R. T. McNEAL,
JNO. G. TAYLOR,
Plaintiff's Solicitors.

Received a copy of the above notice this 26th day of October, A. D. 1887.

(Signed) A. MACON,
Defendant's Solicitors.

Colorado Oil Company *vs.* Agustus R. Gumaer *et al.* Notice of taking depositions *de bene esse* at Canon City, Colo. W., M. & McN. No. 1296.

79 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, State of Colorado, Fremont County, }

Be it remembered that on this first day of November, A. D. 1887, I, Charles E. Waldo, a notary public in and for the said county of Fremont and residing thereat, did call and cause to be and personally appear before me, at my office, in the town of Canon City, in the said county of Fremont, in the district and State aforesaid, at ten o'clock a. m. of said day, Aaron C. Henderson, Jesse Frazer, Amasa W. Lucas, Stephen J. Tanner, Charles P. Lefever, and Simeon A. Josephi, to testify and truth to say on the part and behalf of the plaintiff in a certain suit now depending and undetermined in the circuit court of the United States for the district of Colorado aforesaid, at Denver, in the said district, wherein The Colorado Oil Company is plaintiff and Agustus R. Gumaer and The Florence Oil Company are defendants.

And on said day, said witnesses having personally appeared before me, and the plaintiff being represented by S. A. Josephi, Esq., its general manager, and by John G. Taylor, Esq., its attorney, and the defendant being represented by Agustus Macon, Esq., their at-

torney, by agreement of both parties the taking of evidence was adjourned until to-morrow, Wednesday, November 2nd, 1887, at the hour of ten o'clock in the forenoon.

O- Wednesday, November 2nd, 1887, at the said hour of ten o'clock in the forenoon of said day, the parties were present by their several attorneys above named; and the said witnesses having been by me first severally duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of con-
80 troversy aforesaid, and being examined by counsel as well on the part of the said plaintiff as on the part of the said defendants, did severally depose, testify, and say as follows, to wit:

AARON C. HENDERSON was duly sworn, and in answer to interrogatories propounded to him on behalf of plaintiff by JOHN G. TAYLOR, Esq., plaintiff's attorney, testified as follows, to wit:

Q. 1. What is your name, age, place of residence, and occupation?

A. Aaron C. Henderson; age, fifty-five years; residence, on the Arkansas river, six miles below Florence, in Fremont county, Colorado. My occupation is ranching.

Q. 2. Are you acquainted with one of the defendants in this case, A. R. Gumaer; and, if so, how long have you known him?

A. I am. I met him three or four years ago, I forget which; I think four years.

Q. 3. Are you acquainted with an attorney named Samuel H. Baker; and, if so, how long have you known him?

A. I am. I have known him about the same length of time.

Q. 4. Did you ever have any dealings with either one of these gentlemen with reference to the leasing of any lands for the purposes of exploring for oil? If so, state with which one of them and when the dealings took place.

It is hereby stipulated by counsel representing the plaintiff and the defendants that all objections and exceptions to questions or answers taken at this hearing may be made at any time before the trial of the cause, with the same rights to each party so objecting as if such objections and exceptions were made and taken at this time.

A. Yes. It was with Mr. Baker, and was either the 6th or 7th of October, 1886.

81 Q. 5. What conversation took place between yourself and Mr. Baker with reference to the leasing?

A. He first wrote me that — wanted a lease for the company of my ranch, and wanted me to come up. I answered that I could not come up; that if he wanted the lease to come down and I would lease to him. He came down and brought his wife and drew up a lease in his wife's name from my wife for two hundred acres. I could not pretend to remember all that was said. He said the company was to have a meeting within ten days in New York, and if the conditions of this lease were accepted they would go to work

without any nonsense, or something to that effect. That is the understanding that he got the lease on.

Q. 6. When you speak of the company do you mean Colorado Oil Company?

A. Yes; he said that he was attorney for that company.

Q. 7. Was any discussion between you as to why the lease was taken in his wife's name? If so, give it in full.

A. Yes. I asked him why not make out the lease to the company direct. He said it was better to have parties present; that he would take the lease in his wife's name and then make it over to Gumaer, who was their general manager. Mr. Wallace, the president of the company, he said, had requested him to get that land in July before, but he had been so busy he could not attend to it.

Q. 8. Was there anything said at that time about other leases for the company being taken in Mr. Gumaer's name? If so, just state.

A. He said that was the way that they took the leases. He named several; I think that Mr. Frazer's was one.

Q. 9. Did he mention any others except Mr. Frazer's?

82 A. No; he spoke in a general way.

Q. 10. Subsequent to this time did you have any further conversation with Mr. Baker about this lease or about his turning it over to the company or keeping it?

A. Not until he got another lease from us.

Q. 11. How and in whose name and when was that lease taken?

A. I am not positive in whose name it was taken, but it was from both myself and wife, the second lease was. It was about six weeks after the first lease. It called for 160 acres that were not in the former lease.

Q. 12. State the conversation that took place at the time of making this second lease.

A. He said the company would go to work sooner if they had a larger body of land to commence on.

Q. 13. Was there anything said about it being optional with him or Mr. Gumaer to keep the lease or turn it over to the company?

A. He told me confidentially, after he had taken the lease, that he and Gumaer might work that ground themselves. They thought of getting up a company. I told him I did not care who worked the ground just so it was worked.

Q. 14. Did you have any conversation with Mr. Gumaer about these leases, or either of them, after they were executed?

A. After the first one was executed Mr. Gumaer was at our house with his foreman, Charles Lefever. I asked him if the company had accepted the lease. He said he supposed they had. I asked him when work would be commenced. He said he could not tell. That was about all.

Q. 15. Are those leases, either of them, in force now?

A. They are not.

83 Q. 16. When were they terminated and by whom and in what way?

A. I don't remember the dates of the termination. It was soon after the conditions of the lease required work to be done. They

were terminated by Mr. Gumaer. He wrote a release on the papers that the leases were drawn upon.

Q. 17. Do you not remember that this was done during the summer of this year?

A. I believe it was.

Q. 18. Let me ask you if it was not done on the 14th of June in this year.

A. One of them might have been done about that time.

Q. 19. When these leases were thus terminated was any proposition made to you by Mr. Gumaer to take another lease himself?

A. Yes.

Q. 20. State the proposition and conversation in full.

A. He said if I would give him a lease for the whole property on the same terms he would give me fifty dollars. I told him I would prefer selling outright to leasing.

Q. 21. How did it come that Mr. Gumaer terminated these leases? State the conversation between you that brought this about.

A. I preferred to have them terminated. I told him I did not want my property tied up for $30 a month. He said he would give me the leases back; that he had more on his hands than he could do in time to commence work in the time the leases call for.

Q. 22. Were you aware of the fact at the time of these releases that Mr. Gumaer was not then the manager for the Colorado Oil Co.?

A. No; I still think he was manager.

84 Q. 23. He never expressed to you anything on the subject? Did not inform you that he had resigned that office several months before?

A. No; he had no chance to. I had not seen him. At the time the leases were terminated I knew that he was out of it. I do not know whether he told me or not. I did not understand question 22.

Cross-examination by Mr. AUGUSTUS MACON, attorney for defendant:

Q. 24. State how far the land that you leased to Mrs. Baker, mentioned in your examination-in-chief, is from the wells then and now operated by the Colorado Oil Company in Fremont county, Colorado.

A. Between five and six miles by the railroad.

Q. 25. How far in a direct line and in what direction from the wells and premises then operated and worked by the Colorado Oil Company, in Fremont county, Colorado, is that land which was leased to Mrs. Baker mentioned in your examination-in-chief?

A. I do not know how far in a straight line. It is in an easterly direction. The railroad is very near direct. It is very nearly five miles.

Q. 26. In your examination-in-chief you have stated that at the time of the execution of this lease to Mrs. Baker that you had a good deal of conversation with Samuel H. Baker, her husband, con-

cerning this lease. Now, will you state that Samuel H. Baker in that conversation and at and before the execution of the lease mentioned the name of the Colorado Oil Company to you or in your hearing?

A. He did.

Q. 27. Please give his exact words and in what connection he used the name of the Colorado Oil Company.

85 A. He said that company had the most push of any company in the country and the best manager. He went on bragging about how much they had accomplished in the length of time that Mr. Gumaer had been managing their business. He gave as an instance Mr. Frazer's lease.

Q. 28. You don't pretend to know anything about any of the matters talked of between you and Baker and mentioned in your examination-in-chief as to the interest of the Colorado Oil Company in the lease which your wife executed to Mrs. Baker and afterwards you and your wife executed to some one whose name you now do not remember except what Mr. Baker stated to you at that time?

A. That was all I knew about it.

Q. 29. I understood you to say in your examination-in-chief that Mr. Baker stated to you at and before the time of the execution of the several leases mentioned by you that he usually took the leases for the Colorado Oil Company to his wife and then turned them over to Mr. Gumaer for the company, and that was the way he had taken the lease from Jesse Frazer. Do I understand you correctly? If not, explain what you meant in your answer to interrogatory 8 in chief when you say, "He said that was the way that they took their leases. He named several; I think Mr. Frazer's was one."

A. No; he said he usually took the leases to Mr. Gumaer.

Adjourned till half past one o'clock p. m.

Cross-examination resumed at 1.30 p. m.:

Q. 30. You stated in your examination-in-chief that Mr. Baker at the time of the execution of the said several leases said to you confidentially that he and Mr. Gumaer were partners and

86 that the lease was for himself and Mr. Gumaer, or words to that effect. Now, please state from all that Mr. Baker said to you before and at the time of the execution of the said several leases whether you believed he was obtaining the said leases for himself and Mr. Gumaer or for the Colorado Oil Company.

A. Mr. Baker said this after the second lease had been executed. I did not believe him much anyway after he had told me a crooked story. I believed that if he thought he could make anything out of it he would keep it himself—that is, after he had told me that. Up to the time the last lease was executed I believed it was for the Colorado Oil Company; that was what I believed up to that time. After he told me what he did confidentially, I believed he would do whatever he thought he could make the most out of.

Q. 31. Please state, if you know, if you have learned any fact or

facts since the making of the said leases by you and mentioned in this examination that satisfies you that the statements made by Mr. Baker as to his procuring the said leases for the Colorado Oil Company were untrue in fact.

A. Yes; I am satisfied of that.

Q. 32. Will you state who was present at the time of the several conversations mentioned by you, had with Samuel H. Baker, wherein he stated that he was procuring the said leases for the Colorado Oil Company?

A. At the first lease I do not remember any one but myself and my wife and Baker and his wife, and at the drawing of the second lease there was Charles Milner, Ben. Hackett, and Jack Long and Archie McClellan; also myself and my wife and Mr. Baker.

87 Q. 33. State what conversation took place then between you and Mr. Baker as to who he was getting this lease for, if there was any such conversation.

A. That is the time that I spoke of that he told me confidentially, when he went out to get his team to go home, that he and Mr. Gumaer were going in together to get up a company, and might keep those leases themselves, and if they did work would be done just as soon. What conversation there was before the leaes was made was very little. He was in a hurry. I think the lease was read over, and that was about all there was said then on that subject.

Q. 34. Please state if you ever had any conversation with Mr. Gumaer since the execution of the said leases or either of them wherein he stated to you or used the name of the Colorado Oil Company with reference to these leases or either of them.

A. I do not remember that he ever used the name of the Colorado Oil Company to me.

Q. 35. How long have you been living in the section of country where you now reside and on the land where you now reside and in and about Florence, in Fremont county, Colorado?

A. Since December, 1879.

Q. 36. How long have you known Mr. Gumaer?

A. I think I met him in the fall of 1883 first, in Florence.

Q. 37. State what business Mr. Gumaer was engaged in or was at Florence to transact, if you know.

A. He asked me if I would lease my property for oil purposes. That is all I know about it.

Q. 38. Please state, if you know, whether it was generally known, in the years 1883, 1884, 1885, and 1886, in and about the community in which you say you have resided for the last three or

88 four years that Mr. Gumaer had procured leases and other interests in oil lands adjacent to the town of Florence, Fremont county.

A. Yes; I think so. I do not know when he commenced, but it is within the last three or four years.

Redirect examination by Mr. TAYLOR:

Q. 39. Speaking of Mr. Baker, in answer to interrogatory 12 in chief, you say that Baker said the company would go to work sooner

if they had a larger body of land to commence on. Was that said by him at the time of the execution of the second lease?

A. Yes.

Q. 40. When you signed that lease to whom did you consider you were leasing? Who did you consider the actual lessee that would comply with the terms of the lease?

A. Colorado Oil Company.

Recross-examination by Mr. MACON:

Q. 41. How many acres did you lease in the last lease mentioned in this examination?

A. One hundred and sixty.

(Signed) AARON C. HENDERSON.

WEDNESDAY, *November 2nd*, 1887.

JESSE FRAZER, being first duly sworn, testified as follows, to wit:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Jesse Frazer; I reside near Florence, in Fremont county, Colorado; my age is sixty-eight years, past, and my occupation is farming a little and raising fruit.

Q. 2. Are you acquainted with A. R. Gumaer and S. H. Baker or either of them? If so, state how long you have been acquainted with them.

A. I am acquainted with Mr. Gumaer, and have known him some five or six years. I do not recollect meeting Mr. Baker but
89 once. Mr. Gumaer introduced him to me then as attorney for the oil company. That was last fall or winter; I do not recollect the date.

Q. 3. Did they transact any business with you at the time Mr. Baker was introduced; if so, what was it?

A. Yes; they leased a piece of land for oil from me for the Colorado Oil Company, I believe it is.

Q. 4. At that time did you know Mr. Gumaer was the manager for the Colorado Oil Company?

A. He told me he was.

Q. 5. Did they say anything to you about having acquired other leases of land in your neighborhood for the Colorado Oil Company?

A. Yes; they said they had leased other land. We had a long talk. I objected to leasing to this company. They put in a plea that Peabody was getting leases on speculation. Mr. Gumaer observed that Mr. Peabody was out and he was agent of that company. They told me they had made other leases.

Q. 6. Did they tell you from whom they had obtained other leases for the company? If so, give their names.

A. They said they had got other leases. I do not know as they said it was for the company, but I supposed it was. I think they named Mr. Tanner and Mr. McCandless, but I cannot say certain; perhaps some others. I think they named Mr. Henderson.

Q. 7. Did they tell you upon what terms they had gotten leases

from Tanner and others and want to get your land upon the same terms?

A. They claimed all on the same terms; all one-twelfth. Yes; they did.

Q. 8. Did they tell you upon what terms they had got a lease from Tanner?

90 A. I can't say whether they told me positively or not. My understanding was that they gave one-twelfth.

Q. 9. Did they give you to understand that they had leased from Tanner for the company?

A. Well, that was the impression that I had. I did not know of any other company but that.

Q. 10. You never executed but one lease to Mr. Gumaer for this company?

A. There was two. First they canceled the first one and signed the second one. Yes, I signed two. The first one was canceled on account of a mistake in describing the land.

Q. 11. When was the first of these leases made and when was the second one made and the first one canceled?

A. I do not know. It was in September or October; maybe later. It was about a year ago. It was a week or two after the first one.

Q. 12. Who brought the lease to you the second time to make the change?

A. I think Mr. Gumaer. I am not quite certain which, but think it was Mr. Gumaer.

Q. 13. Who did most of the talking in these negotiations, Mr. Baker or Mr. Gumaer?

A. Mr. Gumaer.

Q. 14. Did Mr. Baker take any part in the conversations or transactions at all?

A. Yes; he talked some.

Cross-examined by Mr. MACON:

Q. 15. There were a great many men that came and talked with you about leasing your land for oil during the summer and fall of 1886, were there not?

A. Yes.

91 Q. 16. State how many.

A. I recollect of some four or five different persons. Mr. Peabody was there three or four times about renewing the old lease that ran out.

Q. 17. Did you not state a few minutes ago in conversation that sometimes a hundred would call and talk about fruit and other matters? State what you refer to by other matters.

A. That is about farming, and so on. I meant talking to so many that I could not recollect what transpired.

Q. 18. Your memory is not very good, is it?

A. No; I am old; it is not as good as it used to be.

Q. 19. Is your hearing good?

A. No; I am hard of hearing.

Q. 20. Will you please state whether or not you can positively swear that in any of the conversations you say that you had with Mr. Baker and Mr. Gumaer that either of them mentioned having leased Mr. Tanner's land?

A. I think that they had leased Mr. Tanner's land. They told of what they had leased. I felt pretty positive that they said it.

Q. 21. Look at this paper (which is a lease from witness to Colorado Oil Company, dated September 27th, 1886, and the signatures to which are crossed out) and state if you had any remembrance this morning of the existence of such paper until it was shown to you and your attention was particularly called to it.

A. No; I had forgotten about it.

(The paper is marked Exhibit A.)

Q. 22. Did you not this morning, when your attention was called to the execution of Exhibit A, deny that you had executed such a paper?

A. I do not know what I did say. Perhaps I might have
92 said that I had forgot it.

Q. 23. You state in your examination-in-chief that you saw Mr. Baker once and talked with him. Will you state when that was and where and what the conversation was?

A. It was when this here (Exhibit A) was executed. He might have been along the second time; I do not recollect now; it was at my house; I do not know that there was any particular conversation between me and Mr. Baker; he talked some; tried to get me to lease the land; I was showing him the lines of the land, but he made a mistake and made it half a mile instead of a quarter.

Q. 24. Will you state that that is all that you can now remember of the conversation that occurred between you and Mr. Baker?

A. I know he was talking a great deal about the well and about the orchard; he was talking a great deal, but it is —; we walked over the land and had a great deal of talk on other matters besides the leasing.

Q. 25. Have you stated in your answer in this cross-examination all that Mr. Baker said to you that you now remember?

A. Yes; all concerning the lease.

Q. 26. You have stated, in answer to cross-interrogatory 16 of your examination, that Mr. Peabody was at your house four or five different times to see you about renewing the old lease. Now, state if you are positive that this was in the summer or fall of 1886.

A. I don't recollect the time; I know it was before he got into the trouble with the company about the wells; he never came there after that.

Q. 27. You were asked by interrogatory 15 as follows:
93 There were a great many men that came and talked with you about leasing your *your* land during the summer and fall of 1886, were there not? Your answer is "Yes." Now state how many men came during that time and who were they and about what time did such persons come, giving the respective dates.

A. That I can't do; there were several came; I did not ask their

names; there were a couple of men from Pennsylvania; I told them I had a lease on it; they asked, how long; there were several men came around and I told them I had leased and they asked how long and said they would not give a copper for a lease for six years; they were mostly these men from Pennsylvania.

Q. 28. Can you give the names of any of these persons?

A. No; I don't recollect anybody but Peabody. I did not ask their names. I think I heard the name of one or two, but did not recollect it.

Q. 29. State the given name of Mr. Peabody and where he now resides, if you know.

A. It is D. G. Peabody, I believe. I understand he lives now in Denver.

Q. 30. Can you state any of the conversation that occurred between you and Mr. Peabody, which took place at the time mentioned by you?

A. He—once or twice he stopped there and got apples and said he was coming over to renew that lease. I told him whenever he got ready to sink I would renew it. I met him another time on the road and he spoke of renewing it. I think we talked, perhaps, four times.

Q. 31. You did not pay much attention to what was said by Mr. Baker and Mr. Gumaer in respect to leasing other lands, did you?

A. No; I did not pay any attention. When they agreed to commence work right away, then I leased it.

94 Q. 32. State fully all the conversation that took place between you and Mr. Gumaer at the several times you met him concerning the execution of the lease you named to the Colorado Oil Company.

A. I don't know. The most that I recollect he told me he was agent for the company and had authority to cancel the old lease that had not then expired, and pledged to go to work in two weeks and be drilling in thirty days, I think, perhaps, or pay ten dollars a month for all the time they were not working. That was just the main part of our bargain.

Q. 33. Does your answer to the last preceding interrogatory state all that you remember concerning the conversation you were asked concerning?

A. I told him I never wanted to be put to any trouble about it. I do not recollect. There were a heap of little things. I do not remember anything further concerning the lease.

Q. 34. You have stated in this examination that the Colorado Oil Company was to commence work in two weeks from the date of the lease. Are you positive that that was the time when they were required to commence work?

A. Well, I am positive that Mr. Gumaer said two weeks. He said he would have some timber hauled the next week, and I think there was some timber hauled.

Q. 35. How long before the execution of the lease was this statement made by Mr. Gumaer that he would commence work in two weeks?

A. It was not but a few minutes that this lease that was cancelled was signed—that is, the first lease.

Q. 36. Did you read the first lease, the one marked Exhibit A, prior to signing it and know and understand its terms and conditions?

A. No; I did not read it, for the reason that Mr. Gumaer or Mr. Baker read it—the most of it.

95 Q. 37. How was the lease written as to when they would commence work?

A. I supposed they were to commence work in two weeks or less. I think the lease said they were to commence work in two weeks or pay ten dollars a month.

Q. 38. Is your remembrance as to the time mentioned in the lease when the Colorado Oil Company were required to commence work as good as any other fact you have testified to in this examination?

A. I do not know as there was any set time within two weeks from the time from the date. It was two weeks from the time the lease was made. Yes, I guess they are, certain, to the best of my recollections.

Q. 39. You were not very well acquainted with Samuel H. Baker at the time of the execution of the lease marked Exhibit A, were you?

A. No, sir; I was not acquainted with him, but Mr. Gumaer told me that he was one that called on me to see about getting a lease before he was down. I know there was several spoke about it, but there was not much said, and still I did not recognize him when I saw him.

Q. 40. Can you say, from your knowledge now, how many times Mr. Baker called on you to procure the lease for the Colorado Oil Company?

A. I only recollect once the time he got it. I know there were four or five had called before, and I suppose, from what Mr. Gumaer said, that he was one of those, but I did not recollect.

Q. 41. Then you are uncertain as to how many times Mr. Baker did call on you respecting this lease?

A. I don't know of but one; Mr. Gumaer told me Mr. Baker had called. As I said before, there was four or five called, but I just told them the land was leased; I am uncertain.

96 Q. 42. Is it not a fact that Mr. Baker had seen and agreed with you as to giving this lease and had it all drawn up ready to execute prior to the time he and Mr. Gumaer went there and procured its execution?

A. He never had been there that I knew of before he and Mr. Gumaer came. The first I ever recollect seeing him Mr. Gumaer came there with him and introduced him to me.

Q. 43. State whether Exhibit A was drawn up at your house or was it drawn up prior to Mr. Baker's coming down.

A. He filled out some there, I know; I do not know how much was written. I know I never saw Mr. Baker or had any contract with him until he was introduced by Mr. Gumaer.

Redirect examination by Mr. TAYLOR:

Q. 44. Were the statements which were made to you about a lease having been obtained from Tanner made when this cam*c*eled lease (Exhibit A) was signed or when the second lease was executed?

A. It was when the first lease was signed.

Q. 45. You say you never read this lease? Is your eyesight good or bad?

A. It is bad. With good glasses and a good light I can read pretty well.

(Signed) JESSE FRAZER.

The examination of Jesse Frazer being concluded, the further taking of evidence in this case was adjourned until to-morrow (Thursday, November 3d, 1887) at the hour of nine o'clock a. m.

97 THURSDAY, *November 3d*, 1887—9 o'clock a. m.

The taking of evidence in this case was resumed, Mr. John G. Taylor, attorney for plaintiff, being present to examine the witnesses.

CHARLES P. LEFEVER, being first duly sworn (and Mr. Augustus Macon, attorney for defendants, being now present), testified as follows, to wit:

Q. 1. What is your name, age, residence, and occupation?

A. Charles P. Lefever; age, 36 years; residence, Florence, Fremont county, Colorado; occupation, foreman for the Colorado Oil Company.

Q. 2. Are you acquainted with defendant A. R. Gumaer; and, if so, how long have you known him?

A. I have known him about three years.

Q. 3. How long have you been acting as foreman for the Colorado Oil Company?

A. Ever since they organized, I believe. It was about April, 1885, that I commenced.

Q. 4. Did Mr. Gumaer ever act as general manager of that company; and, if so, when did he take charge and when did he retire from the affairs of the company?

A. He did. He took charge, I think it was in June, 1886. He retired, I think it was the fall of 1886.

Q. 5. When Mr. Gumaer came into the management of the company how many wells were being worked, and upon whose land, as near as you remember?

A. There were two pumping wells on the Lobach farm, and one pumping well on the McCandless farm, and one drilling well on the McCandless farm. That was all.

Q. 6. Were you in 1886, and are you now, acquainted with the boundaries of the Tanner farm, owned by S. J. Tanner; and, if so, where is it located?

98 A. I am not much acquainted with it. I know where his farm lies; I know nothing about his lines; at least I cannot say where his lines are. I know where his fences are, but whether they are his line fences I cannot say.

Q. 7. How many wells were sunk for your company under Mr. Gumaer's management, and upon whose lands, if you know?

A. There were two sunk on the McCandless farm, Nos. 5 and 6, and there was one sunk on the Tanner farm, No. 8. Well No. 7 was sunk on the Frazer farm under Mr. Gumaer. There was another one, No. 9, started on the Tanner farm, but it was not finished. I do not think No. 7 was finished under Mr. Gumaer.

Q. 8. Do you know if there were any wells being sunk on what was known as the Tanner land when Mr. Gumaer commenced acting for this company?

A. There were not.

Q. 9. Did you have charge of the sinking of well No. 8, and for whom were you working, and who bore the expenses?

A. I did. I was working for the Colorado Oil Company. The Colorado Oil Company bore the expenses; at least I was under that impression; the vouchers were all in their name.

Q. 10. State, as near as you can, the cost of sinking the well, together with the machinery and appliances.

A. I think about eight thousand dollars.

Q. 11. How much work was done on No. 9, which you say was on the Tanner farm, while Mr. Gumaer was in charge?

A. The derrick was built and it was drilled about four or five hundred feet.

Q. 12. State about the cost of that work.

A. I have not thought about these things lately, and cannot be accurate now. The answer to question 11 should be corrected. We had but just commenced drilling when Mr. Gumaer quit,

99 and well No. 7 on the Frazer farm was not then commenced. The derrick was built, but the drilling was not begun till Mr. Josephi took charge. I think that the cost of what had been done on well No. 9 up to the time Mr. Gumaer quit was—the derrick cost about $800 to $850, and the whole was about $1,200, as near as I can come to it.

Q. 13. Out of whose money was that paid?

A. The Colorado Oil Company's.

Q. 14. Are you acquainted with Mr. Wallace, the president of this company, and has he visited the company's works? If so, state when.

A. I am. He visited—the first visit he made, to my knowledge, was in July, 1886.

Q. 15. Was Mr. Gumaer then in charge?

A. No, sir.

Q. 16. Was he placed in charge during Mr. Wallace's stay?

A. He was.

Q. 17. Did you ever hear any conversation between Mr. Wallace and Mr. Gumaer, after Mr. Gumaer went in charge, with reference

to the renewal or obtaining leases for the company? If so, state the conversation and when and where it occurred.

A. I did hear such conversation. It was one day we were going from well No. 4 to Florence. It was a short time before Mr. Wallace went back, some time in July, 1886. Mr. Wallace told Mr. Gumaer something about holding the Lobach lease and something about getting a lease from Tanner.

Q. 18. What answer did Mr. Gumaer make to that?

A. I could not say as to what the answer was. He did not seem to feel—that is, he did not seem to think much of the Lobach lease, but he seemed to favor the Tanner lease.

Q. 19. In that conversation did you hear Mr. Gumaer make claim to any rights in the Tanner land?

A. I did not.

100 Q. 20. Did you have any conversation with Mr. Gumaer when well No. 8 was located, and did he make any statement at or about that time as to why he was planting the well on the Tanner land?

A. Yes; he was down there and located it. He said the company had got a lease and he wanted to drill. He spoke in this way: He said the company had got a lease and wanted to get a well down as soon as they could, and the place he indicated was on the Tanner land.

Q. 21. Did or did not Mr. Gumaer at that time state that the company had a lease of the land on which No. 8 was being located?

A. He spoke it in that way. He did not come out and say that it was Tanner's land. He said the company had a lease of the land where the well was located.

Q. 22. When did you commence well No. 8 and about when did you finish it?

A. We commenced somewhere along in the fall of 1886, and we finished it, I think, about two months afterward.

Q. 23. Did your company do any other work on the Tanner land; and, if so, when and to what extent?

A. They dug two cisterns by No. 8. They erected a derrick there for No. 10 and moved a boiler and things there and got ready for drilling. The cisterns were dug as soon as the well was drilled at No. 8. This derrick at No. 10 was built under Mr. Josephi the spring of 1887.

Q. 24. Who was with you when you located well No. 10?

A. S. J. Tanner and Mr. Josephi.

Q. 25. State what part Mr. Tanner took in the location of it, either by conversation or otherwise.

A. Mr. Josephi and I went down there to locate the well, and Mr. Tanner went with us. He said he did not want it located where we had been talking about putting it, but would show us his

101 favorite place. He took us to where No. 10 was located. There was something said about the fence or a line by Mr. Josephi, and Mr. Tanner said there was no trouble about the line; the well was on their lease—on the Colorado Oil Company's lease.

Q. 26. Do you know where Mr. Gumaer's well No. 2 is?

A. I do not know the numbers of his wells. I know where all his wells are, but I do not know the numbers of them.

Q. 27. Did Mr. Tanner at that time say anything about Mr. Gumaer's well or either of them being on his land leased to the Colorado Oil Company? If so, state what he said.

A. When he said that this No. 10 was located on the Colorado Oil Company's land Mr. Josephi asked him how the line ran. He told him, and then Mr. Josephi asked him how it was that Mr. Gumaer had a well onto it, and he said he did not know; that was Mr. Josephi's lookout. He had leased the ground to the Colorado Oil Company, and that they could do as they were a mind to with it.

Q. 28. Is derrick No. 10 now standing? If not, state when it was removed and all the facts connected with the removal of it.

A. It is not standing. It was removed the first day of May, 1887, I believe. Mr. Gumaer had a lot of men go and tear it down and drew it off.

Q. 29. Were you and any of the employees of your company at this derrick on the morning of the first of May? If you were, state the circumstances under which you left.

A. We were there; were called there to protect the rig. We heard they were going to tear it down, and we remained there till the sheriff came and took us away. I think it was between eight and nine o'clock in the morning that he took us away.

102 Q. 30. Was it before or after you were taken away by the sheriff that the rig was torn down and removed?

A. They chopped it down about half an hour after we left.

Cross-examination by Mr. MACON, for defendants:

Q. 31. You state in your examination-in-chief, in answer to interrogatory 10, that the cost of sinking well No. 8, together with the machinery required, was about $8,000. Now, state if you have any estimates of the cost of the same; and, if so, how were they kept and who did it.

A. I have estimated it in this way: The wells all range from six to eight—ten thousand dollars each. I had a chance to know something about it myself. I know all about building the derrick; built the derrick myself and paid the men on the well, and knew what the casing and tubing and rods—what they generally cost. I could not tell exactly to a dollar, nor to within quite a little of it, of course. It was that way with everything all about it. I was there and had a chance to know. I kept no certain account of it. I suppose Mr. Gumaer kept the accounts. I know it was his place to keep them and I suppose he did it.

Q. 32. Do you know, as a matter of fact, that Mr. Gumaer did keep all the accounts of the cost involved in the sinking said well and all the expenses connected therewith, including the necessary machinery and proper appliances for the sinking and operating this well No. 8?

A. I could not say that he did or that he did not. I supposed he did, though.

Q. 33. Was it not the business of the general manager of the company to keep such account?

A. I should consider it was.

Q. 34. Do you not know, from your own knowledge, that Mr. Gumaer kept all the accounts of the labor, the purchase of
103 tools, implements, and machinery used in and about sinking well No. 8 spoken of in your examination-in-chief?

A. I suppose he must. I do not know of anybody else kept it.

Q. 34. State what the derrick on well No. 8 cost.

A. I think about $850; maybe more. I could not state exactly what it cost.

Q. 35. State what the machinery cost, itemizing each particular piece of machinery used in sinking well No. 8.

A. Mr. Gumaer told me that the engine cost $300. I think the rig irons cost about $100. The tubing—I am not prepared to give an itemized account of everything that was used on the well. I can give it to them, but will have to refer to time that I have got at home. I did not say it cost exactly that amount of money; I said somewheres about that.

Q. 36. Do you now say that you kept an account of the machinery used in and about sinking and operating well No. 8, together with all the cost attending the same and have it at your house?

A. I did not say so; I do not say so now.

Q. 37. Why do you desire to refer to your accounts, then, at home in order to give me a correct answer to question 35?

A. I have considerable many duplicate bills at home, and I have the men's time, and I can tell exactly how much tubing and stuff was in the hole, and I could refer to a price-list and tell somewheres about what the prices were.

Q. 38. Can you, from memory, make any further answer as to the cost of derrick, tools, implements, and everything connected with the sinking of well No. 8 than you have in answer to question 35? If so, give them specifically.

A. Nothing more than a rough guess; same as I told you before.

104 Q. 39. Have all the facts that you have stated in your examination been given as rough guesses?

A. No, sir.

Q. 40. Why do you make rough guesses as to some things and not as to others?

A. Because I do not know positive about them, and some things I do. I state them as near positive as I do know. Anything I know I state positively. The things I don't know I do the best I can at.

Q. 41. In answer to question 37 of your examination you say, I have considerable many duplicate bills at home. Now, state what duplicate bills you have at home that you refer to.

A. I have some duplicate bills, I think, for stuff that come from the east—machinery—and all the stuff that came from Denver, from Badgely and Watkins. I could not say that I could find them all, for I never used them much after checking the stuff off.

Q. 42. How far are those duplicate bills from the place of this examination, and who has them in possession?

A. They are ten miles away from here. I have them, or, at least, suppose I have.

Q. 43. When did you see them last?

A. As I told you before, I do not remember noticing them for a long time.

Q. 44. Can you produce those duplicate bills? If so, produce them and file them as a part of your answer to this question.

A. I can try as hard as anybody. If they are there I can produce them. There are some there, but I do not know how many I have got.

Q. 45. Will you explain your answer to question 37 in your examination, wherein you say, "I have considerable many duplicate bills at home," if you do not know now that you have such
105 duplicate bills?

A. I have some duplicate bills at home and, if Mr. Macon wants everything, I have a book with price-lists in and can take down everything about No. 8 and give him the price of it, what it cost at that time or what the price-list was at that time.

Q. 46. Did you not state in your former examination in answer to a question propounded by me as to the cost of the machinery, implements, and all connected with the sinking of No. 8 well that you had duplicate bills at home of the same?

A. I did not.

Q. 47. Did you say that you had considerable many duplicate bills of the same at home?

A. I did not. I think I have, though, but I did not say so. I think I have some at home, but I did not say of the same.

Q. 48. Then I understand you now to say that you have only a few duplicate bills of the machinery, tools, implements, and so forth, connected with the sinking and working of well No. 8 and the machinery connected therewith?

A. I say I have quite a good many at home. I do not know whether they are connected with No. 8 or not.

Q. 49. State what they are connected with and describe any one of those bills.

A. Why, they are connected with oil-well supplies, such as drive-pipe and oil-well supplies. I could not describe it. Not knowing what it was till I see it, how can a man describe it?

Q. 50. During your employment for the Colorado Oil Company what have your duties been?

A. Well, I drilled some. I worked at several different things. I helped build rigs, tear down rigs, move rigs, pumped oil,
106 shoveled some, fell out of a derrick, dressed tools, connected up pipe line and pumps, helped get out some timber and move it, worked around cisterns, helped pump water, set up tanks, tore them down, put them up again, moved them from one place to another, moved freight and lumber, built tool-houses and moved tools around; did a little of everything that is to be done around the lease.

Q. 51. You can state now if you ever kept the books for the Colorado Oil Company during your employment for them; and, if so, when, and where are the books, if you know?

Continuation of Charles Lefever's testimony after adjournment for dinner and after testimony of Amasa W. Lucas on Thursday, November 3d, 1887, from previous page.

A. The time books were all that I kept. I kept them ever since I have worked for the company. They are at my home, in Florence, Fremont county, Colorado.

Q. 52. Are the books mentioned in your last preceding answer the books you refer to as showing the cost of the derrick, tools, implements, and machinery at well No. 8?

A. They are not; they are only the time books wherein I kept the men's time—the time of the laborers.

Q. 53. In answer to question 35 you say, I am not prepared to give an itemized account of everything that was used on the well; I can give it to them, but will have to refer to time that I have got at home. Do you now say that your time book will give you such information concerning the cost of derrick, tools, implements, and appliances, together with the cost of labor, in the sinking of well No. 8? If not, state what you meant by the answer above repeated to you in this question.

107 A. I meant my time book would give me the cost of the wages, and I could take my other book and tell the price of the stuff that was in the derrick and also the tools.

Q. 54. Do you say that your answer to the last preceding question is an explanation of the words "I can give it to them, but will have to refer to time that I have got at home," in your answer to question 35?

A. That is my explanation to the time. It would be hard to tell how much a derrick would cost till I could tell how much work was put into it and what the wages was.

Q. 55. You say in your answer to question 35 that the rig irons cost about a hundred dollars. Are not rig irons included in the cost of the erection of a derrick?

A. A derrick complete, of course, has the rig irons in it.

Q. 56. You have stated in this examination that the derrick at No. 8 well cost $800 or $850. Then, again, when you are asked to itemize the cost of the derrick, tools, implements, and machinery used in and about well No. 8 you say, in addition to the derrick costing $850, you put in an additional item of rig irons, which you estimate at $100. Why do you put in this additional item of rig irons when it is all included in a complete derrick?

A. I was asked to itemize the thing. I was going to tell you what every piece of lumber cost as near as I could.

Q. 57. If that is your mode of itemizing the several articles used in and about the sinking and operating an oil well, why have you in your former answers, when you were asked to itemize these several articles, mentioned the derrick as one entire article, the en-

gine as another, instead of giving the several boards, lumber, nails, and any other specific article which was used in the construction of a derrick, and also why did you give the engine as one entire
108 article instead of giving the several pieces which go to constitute an entire engine?

A. I did not understand that you wanted me to tell every piece in the engine. I spoke of things that I knew the most about, and I went as far as I could without referring to books and stuff that I had at home.

Q. 58. You said in your examination that while $8,000 might not be the exact cost of the rig, derrick, machinery, and appliances used in and about sinking well No. 8, it was about that sum. Will you state from your remembrance and knowledge of the several implements — appliances used in and about sinking well No. 8 that $8,000 was about that sum—was about the cost?

A. That is what I think; yes.

Q. 59. Is it not a fact that you cannot give the several items of the machinery, implements, and appliances which were used in and about sinking and operating that well?

A. I will answer that question this way: I can come just as near to it as Mr Macon can by taking his price-list and going around his office and looking at his books and telling what they cost.

Q. 60. Can you now state from memory the price of the several articles that go to make up eight thousand dollars or about eight thousand dollars? If so, give an itemized account of each, together with the cost of the same.

A. As I told you before, I could not tell you the cost till I see a price-list. Prices vary from one month to another.

Q. 61. Have you a price-list in your hands which you can look upon and determine the price or cost of the several articles mentioned in your last preceding answer; and, if you have not, how can you tell?

A. No; I have no price-list here; I think I could get
109 one at Alling's. I cannot tell without referring to a price-list. Some of them I can; some I cannot. I know about the engine; I know Mr. Gumaer told me what the engine cost, and I think that is a set of rig irons I ordered in Pueblo myself.

Q. 62. Do you, in your last preceding answer, state all that you know and can now remember concerning the price and cost of the derrick, implements, and appliances and machinery used in and about well No. 8, mentioned herein, without looking upon a price-list?

A. I could not tell exactly. No.

Q. 63. You stated in answer to question 11 in your examination-in-chief that the derrick was built on No. 9 and it was drilled four or five hundred feet, and in another part of your examination you say this work was done on No. 9 while Mr. Gumaer was general manager of the Colorado Oil Company, and in answer to question 12 you say "We had but just commenced drilling when Mr. Gumaer quit." How do you explain these contradictory statements?

A. I explain it just as I did before. I told you I was mistaken and rectified it.

Q. 64. Do you mean to say in your last preceding answer that Mr. S. A. Josephi did not state to you, after you had made your first answer that the well was down four or five hundred feet, that it was only commenced, and did you not, because of that statement of Mr. Josephi, make the correction above referred to?

A. I did not. I will explain it if it is necessary. I saw that I had made a mistake and said that I wanted a little time to think about it, for I had not thought anything about it for quite awhile, and I believed I was mistaken in the depth of it. Mr.
110 Gumaer spoke first and said, Yes, and Mr. Josephi spoke and said it was right; that I was mistaken. Mr. Gumaer spoke of the boiler, which turned my attention back, so I knew he was right, and that Mr. Josephi was.

Q. 65. Nevertheless, it is a fact that you made your answer to question 11 and made no attempt to correct it until your attention was specially called to the error, did you not?

A. Nobody drew my attention to it till I did myself.

Q. 66. Do you pretend to say that you proposed in any way to change your answer to question 11, as shown in your answer to question 12, until the error was particularly pointed out by Mr. Josephi and Mr. Gumaer both?

A. I do, sir. No error was pointed out to me till I had stopped and was talking about it.

Q. 67. You state, Mr. Lefever, that you heard a conversation between Mr. Wallace and Mr. Gumaer in reference to renewing or obtaining leases for the company, and that it was one day near Florence. Will you state just what Mr. Wallace said to Mr. Gumaer, using his exact words as near as you can?

A. I can explain what I heard; yes. Mr. Gumaer started up the road. Mr. Wallace was talking with me as we were going up the road. Mr. Gumaer stopped and we caught him. Mr. Wallace says to him, "How about them leases?" Then he said, "That Lobach lease—we want to hold it or renew it." I am not sure which it was he said, and he spoke about the Tanner lease, getting the lease of Tanner, and I saw they were talking business that did not concern me any. Mr. Gumaer said something—that he did not think much of the Lobach lease, but thought favorably of the Tanner lease or ranch, whatever it was. I passed on then; I left them talking. That is all I know about the conversation.

Q. 68. How long did you stop and listen to the conversation?
111 A. I did not stop at all. We were walking along.

Q. 69. And in passing Mr. Wallace and Mr. Gumaer you say you heard Mr. Wallace say something about renewing or obtaining lease from Lobach and Tanner, and you, thinking it was not your business, passed on, did you?

A. After I heard what I stated; yes.

Q. 70. You paid very little attention to what was said at that time by either Mr. Wallace or Mr. Gumaer, did you not?

A. I paid just enough attention to hear what I heard and that was all.

Q. 71. Do you know what other conversation, if any, took place at that time between Mr. Wallace and Mr. Gumaer concerning the subject then being discussed by them?

A. Nothing only what I heard; what I stated.

Q. 72. When Mr. Wallace spoke to Mr. Gumaer about the subject of leases mentioned by you, can you now state what Mr. Gumaer's answer was; and, if so, give his exact words?

A. I could not any closer than what I did.

Q. 73. Will you state the exact words of Mr. Gumaer in reply to Mr. Wallace respecting obtaining leases, or any single word from which you inferred that Mr. Gumaer seemed to assent to Mr. Wallace's request?

A. I could not say anything more than I have said. Mr. Gumaer did not; I did not understand Mr. Gumaer to say whether he would or would not.

Q. 74. You say that you assisted in the location of derrick No. 10 of the Colorado Oil Company on Mr. Tanner's land. Will you state, if you know, upon what identical tract of land, according to the Government numbers, it was located upon?

A. I do not know anything about the Government numbers.

Q. 75. Look at that paper (paper handed to witness is a
112 certified copy of a lease from Mr. Gumaer to the Colorado Oil Company, which is marked Exhibit B) and state if derrick No. 10, mentioned by you in this examination, is on the southeast quarter of the southeast quarter of section fifteen or the northeast quarter of the northeast quarter of section twenty-two, all in township nineteen south, of range sixty-nine west, in the county of Fremont, State of Colorado.

A. I do not know anything about the section lines or quarter-section lines.

Another certified copy of a lease between Gumaer and the Colorado Oil Company is filed and marked Exhibit C.

Q. 76. You state in your examination-in-chief that you and Mr. Josephi went to locate a well, and Mr. Tanner went with us and took us where No. 10 was located, and you also say there was something said about the fence or line by Mr. Josephi, and Mr. Tanner said there was no trouble about the line, the well was on their lease, on the Colorado Oil Company's lease. Now, will you state positively and deliberately that Mr. Tanner made any such statement?

A. I certainly say he did; two different times.

Q. 77. Will you now positively swear from your own knowledge that Mr. Tanner at the same time and in the same conversation with Mr. Josephi said that No. 10 was located on the Colorado Oil Company's land, and that in the same conversation Mr. Josephi asked him if Mr. Gumaer had a well on it, and Mr. Tanner in reply said he did not know that, that was Mr. Josephi's lookout; that he (Tanner) had leased the ground to the Colorado Oil Company, and

that they could do as they were mind to with it, or words to that effect?

A. That is not just exactly the way the conversation was
113 carried on. Mr. Josephi asked Tanner whether that well of Gumaer's was on the Colorado Oil Company's lease. Mr. Tanner said it was. That was before we got where No. 10 was located, and this other conversation was carried on after we got there. That is the conversation in regard to the lines and the location of No. 10 that was carried on after that.

Q. 78. Will you state that, about the time referred to in your last preceding answer, Mr. Tanner made a statement to Mr. Josephi in the following words, that he (Tanner) had leased the ground (meaning where No. 10 was located) to the Colorado Oil Company, or words to that effect?

Ans. He certainly did.

Q. 79. Please give the exact words used by Mr. Josephi and addressed to Mr. Tanner which called out the statement from Mr. Tanner that he had leased the ground to the Colorado Oil Company, stating who was present at such conversation and the time and place; state fully all that was said by either Mr. Tanner or Mr. Josephi.

A. We went down after Mr. Tanner to locate the well and, while we was passing up his lane, this conversation in regard to Mr. Gumaer's well being on the Colorado Oil Company's ground was brought about in some way about the lines, and Mr. Josephi and me had located this No. 10 well and Mr. Tanner did not like the location on account of its being on his farming land, and he said he would go with us and show us where he would like to have the well put or his favorite place—something to that effect—and he took us where No. 10 was located and then they talked about the lines, as I stated before; Mr. Josephi was present and Mr. Tanner and myself; I cannot state the exact words used by either party; Mr. Josephi said something about the lines and Mr. Tanner said it was all right.

114 Q. 80. Are you now positive that you heard all that was said at that time by either Mr. Josephi or Mr. Tanner respecting the lease of this land; if so, can you now remember the same?

A. I am not positive that I heard it all.

Q. 81. Did you know at that time that defendant Gumaer had leased parts of what was known as the Tanner land to the Colorado Oil Company, and, among other things, granted in said lease to the Colorado Oil Company the right to sink three wells on the Tanner tract of land?

A. I never heard of it before; not that I remember.

Q. 82. Then, if such a lease had been made at that time and was in existence, as mentioned in the last preceding interrogatory, might not the conversation that you have related as having taken place between Mr. Josephi and Mr. Tanner have had reference to the lines mentioned in such lease; and will you swear positively that such

lines were not the subject of discussion between Mr. Tanner and Mr. Josephi that you have before mentioned?

A. I cannot swear positively to it.

Q. 83. Then I understand you, Mr. Lefever, to say that you are not certain as to just what lease was being discussed between Mr. Josephi and Mr. Tanner in the conversations above referred to by you?

A. All I heard them say about it was the leases of the Colorado Oil Company.

Q. 84. You say that all that you understood was that it was a lease to the Colorado Oil Company. Now, will you state who, if any one, was mentioned in that conversation as having made the lease?

A. I did not hear them say that anybody made the lease.

115 Q. 85. Mr. Lefever, you have stated something about derrick No. 10 being pulled down and removed, and your arrest, on or about the first day of May, 1887. You may state whether or not you have an action pending in the district court of Fremont county against A. R. Gumaer for your false imprisonment resulting from your arrest on that day.

A. I have.

Q. 86. State who, if any one, has charge of and is conducting the said suit for you.

A. We got Mr. Josephi to employ a lawyer for us. We thought he had considerable law on hand and would know where to get hold of a good one; that is as far as he had anything to do with it.

Q. 87. Have you a contract between yourself and Mr. Josephi in reference to said suit, whereby you authorize and empower him to proceed at law or settle by compromise as he, in his judgment, may think best?

A. I do not think it reads exactly that way. If you have one I should like to see it. (Here a paper was handed to witness and was examined by him, whereupon he said:) I think it is about the same.

The paper was marked Exhibit D; also another paper was introduced and marked Exhibit E and question asked:

— 88. Examine that paper (Exhibit E) and state if you know what it is.

A. I have examined it and I know what it is.

Q. 89. State what it is.

A. It is a slip of paper that I wrote to Fred. Walters.

Q. 90. You wrote that letter while you were in the employ of the Colorado Oil Company, did you?

A. Yes, sir.

Q. 91. Is Exhibit D the paper that you enclosed in Exhibit E with the request that it be signed?

A. I could not say. I think it looks like it.

116 Q. 92. Will you state, if you know, how deep well No. 9, belonging to the Colorado Oil Company, was on the first day of May, 1887, and also how deep the well No. 10 was at the same time?

A. No. 10 we had not commenced yet. No. 9 was about six hundred feet.

Q. 93. State how deep well No. 9 is at this time.

A. I guess she is no deeper; I think about the same.

Redirect examination by Mr. TAYLOR:

Q. 94. If Mr. Gumaer had not destroyed and removed No. 10 derrick when were you going to commence drilling?

A. Monday morning, the next morning after he destroyed it. It would have been the second day of May, 1887.

(Signed) CHAS. LEFEVER.

Adjourned till half past one o'clock p. m. of this day.

THURSDAY, *November 3d*, 1887—1:30 p. m.

By consent of the parties, the examination of Lefever was suspended and another witness, AMASA W. LUCAS, was duly sworn and testified as follows, to wit:

(Examined by Mr. TAYLOR:)

Q. 1. What is your name, age, residence, and occupation?

A. My name is Amasa W. Lucas; age, forty-three; residence, in Fremont county, Colorado; occupation, farmer.

Q. 2. Are you acquainted with an attorney by the name of Samuel H. Baker? If so, how long have you known him?

A. Yes, sir. I should think it was about three years ago that I knew him by sight, but to be personally acquainted with him I did not know him till last winter.

117 Q. 3. Did you ever have any dealings with him with reference to leasing your lands to him for oil purposes? If so, when and where were such dealings had?

A. I will just say with regard to the lands that that belongs to my wife. The land is in her name. The dealings that I had with Samuel H. Baker with regard to leasing the land for oil was, I think, on the 19th day of December, 1886—the first talk I had with him. I would not be positive as to the date; it was about that date. It was in Canon City. We came to an agreement that day. I leased him eighty acres. He wrote out the lease that day, and my wife and I were in town that day, and he gave the lease to us and we took the lease and read it over, and then we noted what changes we wanted to make in the lease. The next day we came up to his office here in this adjoining room, and the changes that we wished to make in the lease he made; and there was one change in the lease which we wanted to make because he said that Gumaer thought it was too much, and that was with regard to the forfeit money—so much to be paid each month. After those changes were made my wife signed the lease. Then we went over to the Exchange bank and my wife acknowledged the lease before Mr. Morrison, I believe it is; it is the man they call Charlie in there.

Q. 4. For whom did Mr. Baker claim to be acting in getting this lease from you and your wife?

A. For the Colorado Oil Company.

Q. 5. Is that lease in force now?

A. No, sir; I suppose it is not, because Mr. Baker signed the lease over to Mr. Gumaer; and I think it was on the 17th day of October, 1887, I went into the Exchange bank and told Mr. Gumaer that I would like to get the lease. He took the lease and wrote a
118 relinquishment on the lease and gave it to me.

Q. 6. How far is this land you leased situated from where the Colorado Oil Company is now operating its wells?

A. I should think it was about six miles.

Cross-examined by Mr. MACON:

Q. 7. State in what direction the land leased by you to Baker and mentioned in your examination-in-chief is as to the oil wells then and now worked and operated by the Colorado Oil Company.

A. It is in an easterly direction.

Q. 8. State if you had any conversation with Mr. Gumaer prior to or at the time of the execution of this lease as to the making of this lease.

A. No, sir.

Defendant's counsel declined cross-examination.

(Signed) AMASA W. LUCAS.

After the testimony of Charles P. Lefever was concluded the further taking of testimony herein was postponed until to-morrow (Friday, November 4th, 1887) at half past eight o'clock a. m.

FRIDAY, *November 4th*, 1887—8.30 a. m.

Messrs. John G. Taylor, attorney for plaintiff, and Augustus Macon, attorney for defendant, were present, and the taking of testimony was continued.

The said SIMEON A. JOSEPHI, being sworn and examined as aforesaid, did depose and say as follows in answer to the following interrogatories on the part of the said plaintiff propounded by Mr. TAYLOR:

Q. 1. What is your name, age, residence, and occupation?
119 A. Simeon A. Josephi; age, thirty-one; occupation, general manager of the Colorado Oil Company; residence, Canon City, Fremont county, Colorado.

Q. 2. Do you occupy any business relations towards this plaintiff? If so, state it and how long this relation has existed.

A. I am the general manager of the company, and have been since about the twentieth of December, 1886.

Q. 3. Are you acquainted with the defendant, A. R. Gumaer; and, if so, how long have you known him?

A. I am; have known him since about the first of December, 1886.

Q. 4. At that date did he bear any relations to your company? If so, state.

A. He was then the general manager of that company, and he continued to be until I took charge.

Q. 5. Are you acquainted with Samuel H. Baker; if so, when did your acquaintance commence? And state what relation, if any, he bore to your company during December, 1886.

A. I am. He was of the firm of Waldo & Baker, the attorneys for the Colorado Oil Company at that time.

Q. 6. Are you familiar with the lease and the lands leased by S. J. Tanner, in this county, for oil purposes, which are in dispute?

A. I am.

Q. 7. Are you a brother of Isaiah Josephi, and was he visiting Canon City during the month of December, 1886? If so, do you know if he had any conversation with Mr. Gumaer about said lease from Tanner? If so, state such conversation, if you heard it.

A. I am and he was. He had a conversation with Mr. Gumaer about the Tanner lease in my presence and demanded it of him for the company. Mr. Gumaer replied that he had the lease long before he was manager for the Colorado Oil Company, and
120 refused to surrender it. My brother asked him then how it was that if he did not intend to surrender the lease to the company why he used the company's money in developing it. He said that Mr. Wallace, the president of the company, had given him permission to do so. My brother then asked him what protection we had for the property that was on the lease, and he told him he would give him a lease to cover the ground on which the property was on. Then my brother and myself and Mr. Gumaer went from the Exchange bank to Messrs. Waldo & Baker's office and drew up a lease to the company covering all his rights to the property on which No. 8 well stood and derrick No. 9, and with the privilege of locating another well; I think about three acres around each well. Mr. Baker wrote out the lease, I think, on a typewriter, and Mr. Gumaer signed it. This was about the 20th of December, 1886.

Q. 8. Are you able, from your knowledge of the cost of materials used in the construction of a derrick and the sinking of a well for oil, together with the labor necessary, to state about the cost of wells and the contrivances connected with them where your company is operating here in this county?

A. I am.

Q. 9. Are you acquainted with well No. 8 and the machinery connected therewith sufficiently to state about the cost of it? If so, state the cost.

A. I am. The cost of the well No. 8, with the tools and machinery, was between five and six thousand dollars.

Q. 10. Are you acquainted with S. J. Tanner and the general situation of his land; if so, how long have you known him?

A. I am acquainted with him and I know the general situation

of his land. I have known Mr. Tanner since the latter part of December, 1886.

121 Q. 11. Did you ever have any conversation with Mr. Tanner with reference to the lease in controversy and the use of the lands so leased? If so, state when and where, the circumstances which brought up the conversation, and the conversation itself.

A. I had several conversations with Mr. Tanner, most of them at his house, relative to this lease in controversy. Mr. Tanner told me that he had given this lease to Mr. Gumaer, knowing him to be general manager of the Colorado Oil Company and believing that the company would carry out the conditions of the lease. He told me that he had given Mr. Gumaer an option on the land before, and that Mr. Gumaer had hauled some lumber on the land, pretending that he was going to work it. He (Tanner) knew it was only a blind; that when he gave this other lease to Mr. Gumaer Mr. Gumaer agreed to take up and pay off some mortgages that were on the land when they became due, and this condition was embodied in the lease. He told me that he had no confidence in Mr. Gumaer and that he always supposed that the lease would revert to the company. He said he did not see how a man could use the company's money in fulfilling the conditions of the lease and then expect to hold it himself. He also told me that Mr. Baker had put in more land on that lease, to the extent, I believe, of forty or eighty acres, more than he (Tanner) intended to put in. Mr. Gumaer, after that conversation, proceeded to put down a well on a two and a half acre tract that is mentioned in this lease in controversy. Said tract lies between the Colorado Oil Company's well No. 6 and well No. 8. I called on Mr. Tanner in reference to this and asked him if he had given Mr. Gumaer permission to put this well

122 down. He re-lied that he had not; that Mr. Gumaer had come there with a paper which he refused to sign. He subsequently told me that he went into the bank to see Mr. Gumaer about this paper and that some one had signed his name to it. He accused Mr. Gumaer of forging his name to the paper. They had a squabble over it. Mr. Gumaer tore the paper out of his hand and tore it in half. The paper fell on the floor. Mr. Gumaer put his foot on it and called to Mr. Morrison, his clerk, for assistance, and succeeded in getting possession of the paper. In the same conversation Mr. Tanner said that Mr. Gumaer ought to be indicted for forgery. I had another conversation with Mr. Tanner about this lease, and he advised me not to fulfill the conditions of the lease as to the completion of well No. 9 and the erection of the third derrick before May 1st, 1887, saying that if the conditions were not complied with he would declare the lease forfeited and make a new one direct to the company covering the same land, excepting the portion which Mr. Baker put in without his permission. On April 13th, 1887, in company with Mr. Lefever, we went with Mr. Tanner to locate No. 10 derrick. Mr. Tanner asked me not to locate it on the land that he was farming, and requested me to locate it above the ditch on land overgrown with weeds, which we did. He asked me on that day or about that time what lease we were operating. I told him

on the lease that Mr. Gumaer had got while acting as our manager. I asked him if the location selected was within those lines and on that lease, and he told me that it was, and that every well that Mr. Gumaer had put down on his place was on that lease. At that interview or another (I do not know which) he again men-
123 tioned Mr. Gumaer's name in relation to the well on the two-and-one-half-acre tract mentioned before. He told me that Mr. Gumaer struck oil and was pumping it into a cistern on which he had a lock and key, and that he (Gumaer) refused to let Tanner know how much oil he was getting from that well. In that connection he volunteered the remark that Mr. Gumaer was the most unscrupulous scoundrel in Fremont county and that he (Tanner) did not believe that Gumaer would render him a fair account of royalty oil due.

Q. 12. Did you ever receive any acknowledgment from Mr. Tanner that your company had complied with the terms of this lease in controversy? If so, please produce it.

A. I did; this is it.

(Witness produces a paper, which is marked Exhibit F.)

Q. 13. Whose signature is this to Exhibit F?

A. Stephen J. Tanner's.

Q. 14. Was it drawn up and executed on the date it bears, and who drew it up and what conversation led to its execution?

A. It was executed on the date it bears. Mr. Augustus Macon drew it up. The conversation that led to it was this: Mr. Agustus Macon was the attorney of the company at that time and also the attorney of Mr. Tanner. He (Mr. Macon) had agreed with me a few days prior to May the 13th that he would not permit Mr. Tanner to make any disposition of his land in the way of a sale until my return from Denver. On my return from Denver I met Mr. Macon in front of Lester & Smith's and he informed me that Mr. Gumaer had bought the Tanner place. I asked him if he had not agreed with me not to allow Mr. Tanner to dispose of his land until my return. He stated he had, but there was no compulsion about it. I told him no; nothing but his word. He then agreed to have Mr. Tanner sign a paper acknowledging that we had fulfilled the
124 conditions of the lease in controversy and he drew up this paper marked Exhibit F, and also wrote a personal letter to Mr. Tanner requesting him to sign this paper. I took the paper and letter to Mr. Tanner and he signed and dated it.

Q. 15. In erecting derrick No. 10 state whether or not you were attempting to comply with this lease in controversy.

A. I was.

Q. 16. Did you operate derrick No. 10? If not, what prevented its operation?

A. We did not. We had everything arranged to go to work drilling the hole on Monday, May 2nd, 1887, but were prevented from so doing on account of the demolition of said derrick on Sunday prior. This was done by a force of men under the direction and co-operation of Mr. A. R. Gumaer.

Cross-examination by Mr. AUGUSTUS MACON, for defendants:

Q. 17. Mr. Josephi, as general manager for the Colorado Oil Company, have you in your possession the books of account wherein is kept the several sums of money paid out by you and Mr. Gumaer, its former general manager, for and on behalf of the company during the whole period of both your management and Mr. Gumaer's? If so, please produce them here, that they may be used in your cross-examination.

A. Yes, sir; I have the books.

(Here Mr. J. G. Taylor, plaintiff's attorney, advises the witness that, neither upon cross-examination nor under the issues of this suit, can he be required to submit the books of the company to examination and advises the witness to refuse to produce them.) Witness, further answering, says:

In conformity with the advice of Mr. Taylor, I refuse to produce the books.

125 Q. 18. These books of account referred to in the last preceding question contain all of the items of cost which the company incurred in employing counsel, and also a specific account of all the cost of well No. 8, mentioned in your examination, do they not?

A. They do not.

Q. 19. Will you state whether or not the books of account of the Colorado Oil Company and which you have in your possession as the general manager of that company contain all the cost and charges incurred by that company in employing counsel, as well as all other costs and charges incurred while and during the entire time that you have been acting as its general manager, from some time in December, 1886, to the present time; and, if so, state whether or not there is any charge against the company for the employment of Augustus Macon, of Canon City, Colorado, as its attorney, save and accept his employment in your defence on the first and second days of May, 1887, before Justice Clelland, of Canon City, upon a charge of an assault with an intent to kill and murder the defendant Gumaer, committed on or about the first day of May, 1887, together with the defence of Charles Lefever and others for an offence charged against them on the same day.

A. I will state that they do, and, among other charges of that kind, they contain a retainer fee and a fee for the case now at issue paid to Mr. Thomas Macon, who, when appointed to the supreme court commission, advised me that he had turned the case over to Mr. Augustus Macon, who had promised to take charge of it for him (Thomas Macon). When I found that Mr. Augustus Macon

126 was on the other side of this case I called on Mr. Tom Macon at his house and spoke to him in reference to this matter and he told me that Mr. Augustus Macon was his brother, and that he could say nothing, excepting that a man could not serve God and Mammon at the same time. I paid Mr. Augustus

Macon for his services on the first and second of May, 1887, and that is all that I paid him at all.

Q. 20. What sum of money, if any, is due Augustus Macon for his services on behalf of the company, as shown by your books?

A. There is no money due Augustus Macon, as shown by our books. What money is due him in this case, if any, from our side, is due him from Mr. Thomas Macon under the arrangements made by Mr. Thomas Macon with Mr. Augustus Macon.

Q. 21. State, if you know, what those arrangements are and when they were made, referred to in your last preceding answer.

A. I do not know the specific arrangements, but I know that they were made after the appointment of Mr. Thomas Macon to the supreme court commission, and that prior to that Mr. Augustus Macon had looked up some law points in regard to the case, and in the presence of Mr. Thomas Macon and myself had spoken of the law points involved in the case.

Q. 22. State how you know that this arrangement was made between Mr. Thomas Macon and myself.

A. Mr. Thomas Macon informed me.

Q. 23. State when and where Mr. Thomas Macon informed you of the arrangement mentioned in the last preceding answer, and state specifically just what Mr. Thomas Macon said in reference to the same.

A. I have already stated two or three times when it was, and my belief is that it was in Mr. Thomas Macon's office. I do not know the specific terms used.

Q. 24. Now, is it not a fact that all that Mr. Thomas Macon
127 ever said to you in reference to my acting for the Colorado Oil Company in this case was that he had gotten me simply to present a motion to the district court of Fremont county to remove this case to the Federal court as a favor to him, and one in which there was no charge whatever made by me?

A. It is not a fact. Mr. Thomas Macon told me just as I have before stated.

Q. 25. Have you, as the general manager of the company or otherwise, made any charges on the books of the company or paid me any money on behalf of such alleged employment? If so, state how much.

A. As I stated before, I paid Mr. Augustus Macon for services rendered on the first and second of May, and, as before stated, Mr. Thomas Macon told me that he had made arrangements with Mr. Augustus Macon in this case.

Q. Ans. (continued.) The books of the company show no charges of moneys paid to Mr. Augustus Macon in this case.

Q. 26. The moneys which you speak of having paid me for services rendered on the first and second days of May, 1887, were rendered for you personally, were they not?

A. My recollection of them were that they were rendered to S. A. Josephi, general manager of the Colorado Oil Company, and I am positive that Mr. Augustus Macon's name is affixed to a company's voucher for the amount.

Q. 27. Were not the services rendered by me on the first and second days of May, 1887, rendered in a cause wherein The People of the State of Colorado were plaintiffs and S. A. Josephi (yourself) defendant, and also in a case wherein The People were plaintiff and Charles Lefever and others were defendants, without any reference whatever to your official position as general manager of the Colorado Oil Company or otherwise?

128 A. They were not. These men that were arrested, some of them were employees of the Colorado Oil Company, and I, as general manager of that company, employed Mr. Augustus Macon to defend them, and, as I stated before, he signed a company's voucher for his bill in that behalf.

Q. 28. Was not the voucher which you speak of and which I signed a voucher setting forth that I, as your attorney, had performed professional services in a cause wherein The People of the State of Colorado were plaintiffs and S. A. Josephi (meaning yourself) was defendant, and about the same statement in regard to the case against Charles Lefever and others?

A. The voucher was, as I before stated, a company voucher, attached to which was the bill that I mentioned before, made out by Mr. Augustus Macon to, I believe, S. A. Josephi, general manager of the Colorado Oil Company, itemized for services in behalf of Charles Lefever and others, and also S. A. Josephi.

Q. 29. The voucher you speak of, which I signed, was simply a means of payment, was it not, of your personal debt to me?

A. It was not.

Q. 30. If it does not, as you have said in your last preceding answer, why do not the books of the company show my employment and payment respecting it?

A. The books of the company show where Mr. Macon was paid, as I have testified before. The bank account shows it too. I have got the check signed.

Q. 31. On whose behalf was it paid, by the company or yourself?

A. I cannot understand that question.

Q. 32. You state in your examination-in-chief that Augustus Macon drew Exhibit F. Is that a fact, or did Mr. Augustus Macon simply copy a paper you brought to him?

129 A. Mr. Augustus Macon drew it. I have no recollection of bringing him any paper at all.

Q. 33. Are you as positive that your statement is true that I drew Exhibit F instead of copying it from a paper that you brought me as you are of any other statement you have made in this examination?

A. I am equally as positive as to all my statements, to the best of my knowledge and belief and recollection at this time.

Q. 34. You say in your examination-in-chief Mr. Macon (meaning myself) had agreed with you a few days prior to May 13th that he would not permit Mr. Tanner to make any disposition of his land until your return from Denver. State, if you can, how many days prior to the 13th of May last was such an agreement made.

A. About five.

Q. 35. Have you any memoranda by which you can determine the day of such supposed agreement? If so, state what it is.

A. I have a memorandum of being in Denver about the eighth day of May and returning about the 12th day of May.

Q. 36. You also say in your examination-in-chief that upon your return you learned that Mr. Tanner had disposed of the land, and that in speaking to me in regard to the supposed agreement on my part not to permit Mr. Tanner to dispose of this land that my reply was, "There was no compulsion about it." Now, is it not a fact that this conversation that you refer to took place near Lester & Smith's grocery store, in Canon City, and that it had reference solely to a demand made by you then and there to have me procure the signature of Mr. Tanner to a paper, a copy of which is Exhibit F, and which you then and there drew from your pocket all ready for Mr.
130 Tanner's signature?

A. It is not a fact; the fact is that the conversation was in reference to the sale of the land. After he told me what he did, that there was no compulsion about it, being a mere agreement between him and myself, and after I had spoken to him about the value of his word and his reply, I then asked him about this other thing which he had previously promised to do for me and asked him if he was going back on that too. He told me he would write out that agreement, and also write a letter to Mr. Tanner asking him (Tanner) to sign it. The language in that agreement (Exhibit F) is not mine.

Q. 37. Was No. 8 well completed while defendant Gumaer was manager of the company?

A. It was.

Q. 38. Do the books of the company show an account against well No. 8 for the amount of money paid out in completing the same?

A. The books of the company kept by Mr. Gumaer show an item of about eight hundred and ninety-three dollars (I think that is the amount) against well No. 8; that amount does not begin to cover the cost of it; that is all the books show against that well as kept by Mr. Gumaer.

Adjourned until one o'clock p. m.

FRIDAY, *November 4th*, 1887—one o'clock p. m.

Q. 39. You say, in answer to question 38, that the books of the company kept by Mr. Gumaer only show an item of eight hundred and ninety-three dollars against well No. 8, but that amount does not begin to cover the cost of it. State what fact or facts are within your knowledge, outside of the book account, regarding the cost of well No. 8.

A. My general knowledge of the value of the materials,
131 machinery, tools used in drilling a well, casing and tubing, pumping outfit, and so forth, confirms me in statement that the amount named ($893), as before stated, did not near cover the cost.

Counsel for defendants here again request of the witness that he

produce the books of the company showing the account against well No. 8, to be used in this examination.

Witness says: According to the advice of counsel, I still refuse.

Q. 40. State how far well No. 8 is from well No. 6 of your company, and if No. 8 well is in pumping distance of well No. 6.

A. Well No. 8 is about one hundred yards from well No. 6, and both wells are pumped with steam from the same boiler and by the same pumping force.

Q. 42. State, if you know, where No. 9 well (spoken of in this examination) is located with reference to what is known as the Tanner tract of land.

A. Well No. 9 is located near the eastern line fence of Mr. Tanner's land.

Q. 43. You state in your examination-in-chief that your brother, Isaiah Josephi, some time in the month of December, 1886, visited Canon City, Fremont county, and that upon such visit he demanded a surrender of the Tanner lease from Mr. Gumaer to the Colorado Oil Company. Now, will you state by what authority Mr. Isaiah Josephi made such demand, and do you not know, as a matter of fact, that he had no such authority from the company?

A. I do not know anything about his authority.

Q. 44. What position, if any, did Mr. Isaiah Josephi occupy or hold in the compa*l*inant company at the time of his visit, mentioned herein, to Canon City?

A. He was vice-president.

132 Q. 45. You state in your examination-in-chief that Mr. Isaiah Josephi, on the occasion of his visit before mentioned, transacted some business for the company, a part of which was the discharge of Mr. Gumaer as general manager of the company and your appointment to that position in his place. Now, will you state what authority, if any, Mr. Isaiah Josephi had to transact such business?

A. As I stated before, I do not know anything about Mr. Isaiah Josephi's authority. I suppose he got his authority from the board of directors in New York.

Q. 46. Have you acted as the general manager of said company ever since your appointment by Mr. Isaiah Josephi in December, 1886, and has your powers and duties been questioned by your company?

A. I have acted as general manager of this company since the receipt of the official notification of my appointment by the board of directors from the secretary of the company.

Q. 47. Did you never act as such manager prior to the receipt of such official notification? If so, how long?

A. I do not believe I ever acted as general manager until after the receipt of that paper.

Q. 48. Was such official notification of your appointment in writing?

A. It was.

Q. 49. Will you please produce the same and file it as part of your answer to this interrogatory?

A. I have not it in my possession. I think it is filed with the secretary of state at Denver.

Q. 50. Is such official notification filed in the office of the clerk and recorder of Fremont county?

A. It is.

Q. 51. Do you mean to say that the official notification of
133 your appointment is filed as above mentioned, or do you mean to say that your appointment as such manager is so filed?

A. I will just say that I do not recognize the distinction at all. Copies of the appointment were filed at both offices.

Q. 52. Was that all the notice of your appointment that you received?

A. I think I got a letter from the secretary at the same time.

Q. 53. Have you such letter in your possession? If so, please produce it and file it as a part of your answer to this interrogatory.

A. I believe I have the letter, but I do not propose to produce it, because I do not know of anything in that letter that can bear on this case.

Q. 54. Will you please state by whom such letter was written, and the date of the same and when you received it?

A. I have before stated by whom such letter was written. I think it was dated some time in December, 1886, and received about four days after its date. I do not recollect the exact date.

Q. 55. Do you decline further answer to the last preceding question?

A. I do not decline to answer any question, but I think it is a sinful waste of time to ask the same question over two or three different times. I have before stated that the letter was from the secretary of this company. If Mr. Macon wants to know the secretary's name, I can furnish it.

Q. 56. Will you state as near as you can the date of the letter notifying you of your appointment?

A. I do not recollect the date. It was some time about the twentieth of December, 1886.

Q. 57. State when you commenced acting as such general manager.

A. About the latter part of December, 1886.

Q. 58 Is your last preceding answer as near as you now can
134 give of the date of your commencing to act as general manager of the complainant company?

A. No, sir; but a man that understands my last answer would know, within a few days, when I commenced to act. The latter part of the month means the latter part of the month. It was about the 20th or 21st of December.

Q. 59. State whether or not well No. 8 is in the possession of the plaintiff company; and, if so, how long has it been in their possession.

A. It is. It has been in their possession, as far as I know, ever since it was drilled.

Q. 60. Has well No. 8 produced oil in paying quantities ever since you took charge of the company's business, and is it now so producing?

A. It has and is.

Q. 61. State about how many barrels per day well No. 8 has produced since you took charge for the company.

A. If it pumps steadily it will produce about eighteen barrels per day.

Q. 62. You have, in your examination-in-chief, mentioned having had several conversations with Stephen J. Tanner and have given Mr. Tanner's statements made to you. Will you state why you, as the manager of the complainant company for them of this suit, did not call Mr. Tanner and prove such statements by him, if the same were true?

A. For the reason we found that Mr. Tanner would be a very unwilling witness for our side, and we believe that he is so tied up by mortgages that the other side has some hold on him. We also are informed that Mr. Gumaer has an agreement with Mr. Tanner relative to the purchase of his land and has promised to pay him forty-nine thousand five hundred dollars or thereabouts. We believe Mr. Tanner is anxious to sell at the price named, and, for that reason, does not like to testify to any facts that might hinder or pre-
135 vent that sale. Mr. Taylor, the attorney of our company, talked with Mr. Tanner and preferred not to put him on the stand as our witness.

Q. 63. Is there a man in Fremont county who bears a better reputation for truth and varacity than Stephen J. Tanner? If so, state who it is.

A. I do not know anybody who has a better reputation than Mr. Tanner for truth and veracity, and I have no desire to attack it nor to reflect in any way upon his character.

Q. 64. Then do you believe from what you know of Mr. Tanner and his character for truth and veracity that he would swear to a lie because of supposed financial embarrassments mentioned by you?

A. I do not believe Mr. Tanner would swear to a lie, and I further believe that Mr. Tanner would substantiate everything I have said in regard to these interviews with him—that is, if his memory is good.

Q. 65. Do you now think that Mr. Tanner honestly believed all the statementswhich you have testified herein that he made to you?

A. I do not know what Mr. Tanner believed, but I know what he said. I am not a mind-reader.

Q. 66. If you doubted the truth of the statements made by Mr. Tanner and his belief in their truth why have you detailed them in your examination herein?

A. That is a fine question to ask a witness. If I doubted the truth of a thing I would not testify to it.

Q. 67. Will you state whether or not you expect or the company you represent expects in the event of this action results in favor of the plaintiff and the defendants are compelled to and do

136 transfer this lease to plaintiff, then such company will carry out all the terms and conditions of said lease with Mr. Tanner?

A. I decline to say what the company will do; that is the board of directors' business and not mine.

Q. 68. Among the terms and conditions contained in said lease, the subject of this action, you have stated in your answer to interrogatory 11, one was that the lessee (or words to that effect) were required to pay off the mortgages or incumbrances upon Mr. Tanner's property, have you not?

A. There is a clause of that character. I have been informed it is ambiguous in its meaning. Mr. Tanner informed me when he gave this lease to Mr. Gumaer Mr. Gumaer agreed to take up and pay off some mortgages that were on the land when they became due, and this condition was embodied in the lease. I told this in the answer to interrogatory 11.

Q. 69. Now, will you state just how Mr. Tanner could be unduly influenced in giving his testimony in this case by reason of incumbrances upon his land which he claims (as you have stated in your answer to interrogatory 11) Mr. Gumaer, the lessee, or your company, if it should be decreed to be the lessee, was bound to pay off and discharge by the terms of the lease?

A. I decline to answer any more questions on that subject.

Q. 70. Is it not a fact that the reason you did not call Mr. Tanner, though you had subpœnaed him here and he was present to give his testimony, was that you knew he would contradict a great many, if not all, of the statements you and Lefever, your foreman, made as to what he said concerning this lease?

A. In my previous answer I replied that I declined to answer any more questions about Mr. Tanner. I desire to say that I believe he will verify all that I have stated relative to interviews with

137 him.

Q. 71. Do not you know, as a matter of fact and by talking with Mr. Tanner long prior to being examined to-day, that he would testify that your company was not mentioned or contemplated by him or by Mr. Gumaer at the time of the execution of this lease in controversy or at any time prior thereto, and that in the execution and making of said lease he dealt solely with Mr. Gumaer individually?

A. I have no knowledge of the manner in which Mr. Tanner will testify.

Q. 72. Now, will you state upon your oath that you did not call Mr. Tanner as a witness in this examination solely because you knew his testimony would be to the effect that he made and executed this lease to Mr. Gumaer individually without any reference whatever to your company, and that such lease was executed by him as a continuation and as a part of an agreement made and entered into between him (Tanner) and the defendant Gumaer on the tenth day of December, 1885, and also that he would contradict certain parts of the testimony of Charles Lefever and yourself given in this examination?

A. All of my testimony given in this case is under oath, and I

believe that Mr. Tanner will verify what I have stated. I have not spoken to Mr. Tanner about this case during this examination at all. Mr. Taylor excused him, and he is the man that is conducting this examination for the Colorado Oil Company.

Q. 73. Examine these papers and see if they are copies of lease mentioned by you in answer to question 7 and marked here as Exhibits B and C.

A. Exhibit B is a copy of that lease.

Q. 74. Examine Exhibit C and state what that is.

A. That is a lease marked No. 15037, oil lease.

138 (These Exhibits B and C will be accepted by both parties as evidence throughout this case. This is agreed to by the attorneys of both parties here present.)

Q. 75. State if you recorded the originals of Exhibits B and C herein. If so, when?

A. Yes; I had them recorded at the dates shown in the papers.

Q. 76. State, if you know, the object and purpose of Mr. Isaiah Josephi's visit to Fremont county, Colorado, in December, 1886.

A. I will state that I presume he came out to look after his interests in the Colorado Oil Company.

Q. 77. Is it not a fact that when said Isaiah Josephi came to Colorado on or about December, 1886, that he came with special reference to the business of the complainant company, and was not a part of his business the settlement by the said company with the said Gumaer, in whose stead you had been appointed as general manager for Colorado for said company, and did he not have general power and authority with reference to such settlement? Please state fully what said Josephi did when he came to Colorado and while in Colorado at the time mentioned with reference to the business of the said company, and especially with reference to any settlement with defendant Gumaer.

A. I do not know what his authority was when he came here. His business was in connection with the Colorado Oil Company as far as I know. He made a settlement with Mr. Gumaer for moneys paid out by Mr. Gumaer. He settled a lawsuit with Mr. D. G. Peabody—two suits, I believe; one against the company and the other by the company against Mr. Peabody.

Q. 78. State whether or not derrick No. 10 was erected upon any portion of the premises contained in either Exhibit B or Exhibit C.

139 A. I do not know.

Q. 79. State how long you have resided in Colorado, and also if you resided in the State of Texas prior to coming to Colorado. State at what place and how long and what was your business while in the State of Texas.

A. I have resided in Colorado since the first part of December, 1886. I resided in Texas from the fall of 1883 until the fall of 1886. My place of residence in Texas was Comanche, Comanche county. My business was that of a banker. I had a half interest

in the Comanche County bank. The name of the firm was Levingston & Josephi.

Q. 80. Were you the Josephi, of Levingston & Josephi?

A. I was.

(Signed) S. A. JOSEPHI.
SIMEON A. JOSEPHI.

140 EXHIBIT A.

Oil Lease.

Agreement made this 27th day of September 1886 between Jesse Frazier party of the first part, and Colorado Oil Company party of the second part; witnesseth that the said first party, in consideration of the sum of one dollar to him paid by the second party, the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party, have granted, leased and demised, and do hereby grant, lease and demise unto the said second party its successors and assigns, all that tract or parcel of land situate in the county of Fremont, State of Colorado and described as follows to wit:

All of the southwest quarter of section sixteen (16) in township nineteen (19) south of range sixty-nine (69) west except so much thereof as is now covered by orchards or has been conveyed to the M. E. Church, of Florence, Colorado. It being expressly agreed that in case the said party of the first part shall during the term of this lease be willing to allow the boring of oil wells as hereinafter specified upon the portion of said lands covered by orchards, then in that event he shall grant to said second party, at its option the said right in preference to all other parties upon the same terms as this lease. With the exclusive right to dig, bore and mine for and gather all oils and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the aforesaid premises, to have and to hold the same for the term of twenty years from this date, or as long as oil is found in paying quantities; also the right of way to enter upon said
141 premises for the purpose of operating, mining or removing said oil and gases therefrom, and for the laying of pipes either under or on said surface, for transportation of oil and gas, and full power to erect all necessary buildings and tanks upon said premises, for the purpose of procuring and storing said oils and gases, with the full right to the said second party of appropriating to its own use all of the oils and gases found upon said premises during said term.

In consideration whereof the said second party agrees to give the said first party one-twelfth ($\frac{1}{12}$) part of the oil produced and saved from said premises—to be delivered on said premises to the party of the first part on the first day of each calendar month. The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not

to disturb any tillable land unless absolutaly necessary to carry out the terms of this lease.

The party of the second part covenants to commence operations for said mining and boring purposes, and to prosecute the same, on some portion of the above-described premises, within thirty (30) days from the date hereof, or the party of the second part shall, within thirty days from said date, commence and prosecute with reasonable diligence—delays by unavoidable accidents excepted—the sinking or boring of one well on said premises to the depth of 1,200 to 1,500 feet, unless oil in paying quantities is sooner found.

Provided, the times, and each of them, above mentioned shall be extended, at the option of the party of the second part, upon payment to the party of the first part of the sum of ten (10) dollars, per month payable monthly until such work shall be commenced,—
and such work then shall be prosecuted with reasonable dili-
142 gence—delays by unavoidable accidents. Excepted, failure of the party of the second part to comply with the terms of this clause shall nullify the lease and render it void.

In case an encumbrance of any kind shall appear against the above-described premises, or any claim which does or might interfere with the full, free and un-terrupted enjoyment and use thereof by the said second party, as aforesaid, said first party agrees to pay off, discharge and satisfy the same. In default thereof said second party may satisfy the same by applying, in payment thereof all oil reserved to said first party, as above mentioned, until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks and for fuel, for drilling and operating all wells under this lease; and the right of way is hereby granted to the party of the second part to build, construct, lay down and maintain ditches and pipes in and upon said premises to convey water to the works of said party of the second part for use therein and thereabouts.

Said second party shall have the right and power to remove their machinery, derricks, tools and fixtures, and any other property, at any time from said premises. If the party of the second part fails to keep and perform the covenants and agreements therein, by him to be kept and performed, then this lease shall be null and void and surrendered to the party of the first part.

It is agreed that the foregoing stipulations and agreements shall apply to and bind the successors executors, administrators and assigns of the respective parties hereunto.

(Signed) [Signatures erased in copy.]

Witnessed by—
(Signed) SAMUEL H. BAKER.

143 STATE OF COLORADO, } *ss:*
Fremont County, }

I, Samuel H. Baker, a notary public in and for said county, in the State aforesaid, do hereby certify that Jesse Frazer, personally

known to me to be the person whose name is subscribed to the annexed lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of September, A. D. 1886.

[SEAL.] (Signed) SAMUEL H. BAKER,
Notary Public.

Know all men that —— ——, of the county of Fremont and State of Colorado, the part- of the second part in the within contract described, made by —— —— to — on the — of ——, 188–, do hereby assign, transfer, and set over the said contract unto —, with all the property, rights of property, interests, power, and possessions of every kind therein conveyed to —; to have and to hold to —, my assignee — aforesaid, and to — legal successors in said property and rights and to — assign- forever.

In witness whereof — have hereunto set — hand and seal this — day of ——, in the year 188–.

—— ——.

Signed, sealed, and delivered in the presence of—

—— ——.

STATE OF COLORADO, } ss:
County of Fremont, }

I, —— ——, do hereby certify that on — day of ——, 188–, 144 before me, a — in and for said county, personally came —— ——, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged that they executed and delivered the same as — free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this — day of ——, A. D. 188–.

—— ——.

(Endorsed:) Exhibit A. U. S. circuit court, district of Colorado. Exhibit A with deposition of Jesse Frazer. Nov. 2, 1887. (S'g'd) Chas. E. Waldo, notary public. Oil lease. From Jesse Frazer to Colorado Oil Co.

EXHIBIT B.

15036. *Oil Lease.*

A. R. Gumaer to Colorado Oil Company. Filed for record at 8.15 o'clock a. m., Dec. 23d, 1886. J. H. Peabody, recorder.

Oil lease.—Agreement, made this 20th day of December 1886, between A. R. Gumaer, party of the first part, and Colorado Oil Company party of the second part, witnesseth that the said first party, in

consideration of the sum of one dollar to him paid by the second party the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party, *have* granted leased and demised and do- hereby
145 grant, lease and demise unto the said second party its successors and assigns, all that tract or parcel of land and rights and privileges in and to land situate in the county of Fremont State of Colorado and described as follows to wit:

The oil well which has heretofore been sunk on the southwest quarter of the southwest quarter of section fifteen (15) in township nineteen (19) south of range sixty-nine (69) west in accordance with a lease from said party of the first part of date October 12th 1886; and all rights and privileges in connection with said well, which said Gumaer has in said well and in the land whereon it is located, by virtue of a lease from one Stephen J. Tanner, recorded, in the records of said Fremont county in Book 28 at pages 368 to 371. Also the right to complete the oil well known as Colorado Oil Company's well number nine (9) which is on an eighty-acre tract of land which consists of the southeast quarter of the southeast quarter of section fifteen (15) and the northeast quarter of the northeast quarter of section twenty-two (22) in township nineteen (19) south of range sixty-nine (69) west of sixth (6th) principal meridian; and the right to sink one other oil well on such part of said eighty-acre tract last above described as said party of the second part shall select, and also all right and privileges and title which said party of the first part has, under and by virtue of said certain lease from one Stephen J. Tanner, of date October 6th, 1886, which is recorded in the deed records of said Fremont county in Book 28, at pages 368 to 371, in and to a tract of land seventeen (17) rods square, whereof said well number nine (9) is the center, and in and to another tract of land seventeen (17) rods square whereof the well above specified as hereinafter to be located and sunk shall be the center; pro-
146 vided that said party of the second part shall not have the right to sink any oil well on any part of the lands last described, other than the two wells above specified. And also all right and rights, title and interest which said party of the first part has under the lease hereinbefore described in and to all oil which shall and may be produced and obtained from said two wells last above described and from the well first above described, without reference to the land from which said oil shall be obtained, with the exclusive right to dig, bore and mine for and gather all oils and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the premises and property hereinbefore conveyed to have and to hold the same for the unexpired portion of the term specified in said lease recorded in Book 28 at pages 368 to 371 of Fremont county records. Also the right of way to enter upon said premises for the purpose of operating mining or removing said oil and gases therefrom and for the laying of pipes either under or on said surface, for transportation of oil and gas, and full power to erect all necessary buildings and tanks upon said premises for the purpose of procuring and storing said oils and gases with the full

right to the said second party of appropriating to his own use all of the oils and gases found upon said premises during said term; in consideration whereof the said second party agrees to pay and deliver to said Stephen J. Tanner, and to his assigns (or if he or they shall refuse to receive the same, to said party of the first part, or his assigns) all royalty on all oil produced and saved from said premises and wells by said party of the second part to which said Stephen J. Tanner, and his assigns shall be entitled under the lease from said Tanner above described, which is one-tenth of all oil produced and saved from said premises to be delivered on said
147 premises, or if said Tanner shall so require the net market price of said one-tenth part in cash less cost of transportation and marketing the same. The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not to disturb any tillable land unless absolutely necessary to carry out the terms of this lease. In case an incumbrance of any kind does or shall appear against the above-described premises, or any claim which does or might interfere with the full free and uninterrupted enjoyment and use thereof by said second party, as aforesaid, said first party agrees to pay off, discharge and satisfy the same. In default thereof said second party shall satisfy the same by applying in payment thereof, all oil reserved to said first party, as above mentioned until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks for drilling and operating all wells under this lease: and the right of way is hereby granted to the party of the second part, to build construct, lay down and maintain ditches and pipes in and upon said premises to convey water to the works of the said party of the second part for use therein and thereabouts. Said party of the second part hereby agrees to complete said well number nine (9) and to erect a derrick for the second well which is to be sunk on the eighty-acre tract above described, as above set forth; on or before the first day of May A. D. 1887. Said second party shall have the right and power to remove its machinery, derricks, tools and fixtures and any other property at any time from said premises. If the party of the second part fails to keep and perform the covenants and agreements therein by it to be kept and
148 performed then this lease shall be null and void and surrendered to the party of the first part. It is agreed that the foregoing stipulations and agreements shall apply to and bind the heirs executors, administrators and assigns of the respective parties hereunto and the successors of said party of the second part.

A. R. GUMAER. [SEAL.]
COLORADO OIL COMPANY, [SEAL.]
By ISAIAH JOSEPHI, *Vice-Pres.*

Witnessed by—
CHAS. E. WALDO.

STATE OF COLORADO, } ss:
Fremont County, }

I, Charles E. Waldo, a notary public in and for said county, in the State aforesaid, do hereby certify that A. R. Gumaer, who is personally known to me to be the identical person whose name is subscribed to the foregoing lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said lease as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of December, A. D. 1886.

[Notarial Seal of Chas. E. Waldo.]

CHAS. E. WALDO,
Notary Public.

149 STATE OF COLORADO, } ss:
Fremont County, }

I, J. H. Peabody, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a full, true, and complete copy of a certain oil lease as the same appears of record in Book 28, pages 445, 446, and 447 thereof, of the records of my office.

Witness my hand and official seal, at Canon City, in said county and State, this 19th day of May, A. D. 1887.

[SEAL.] (Signed) J. H. PEABODY,
County Clerk and Recorder.

(Endorsed:) Certified copy of oil lease. A. R. Gumaer to Colorado Oil Company. U. S. circuit court, district of Colorado. Colorado Oil Company *vs.* A. R. Gumaer *et al.*. Exhibit B. Nov. 3, 1887. (S'g'd) Chas. E. Waldo, notary public.

150 EXHIBIT C.

No. 15037. *Oil Lease.*

A. R. Gumaer to Colo. Oil Company. Filed for record at 8.30 o'clock a. m. Dec. 23d, 1886. J. H. Peabody, recorder.

Oil lease.—Agreement, made this twelfth day of October 1886 between A. R. Gumaer party of the first part and Colorado Oil Company party of the second part; witnesseth that the said first party in consideration of the sum of one dollar to him paid by the second party, the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party, have granted leased and demised and do hereby grant, lease and demise unto the said second party its successors and assigns all that tract or parcel of land situate in the county of Fremont, State of Colorado, and described as follows, to wit:

The southwest quarter of the northwest quarter (S. W. ¼ N. W. ¼) of section twenty-three (23) township nineteen (19) south of range sixty-nine (69) west.

With the exclusive right to dig, bore and mine for and gather all oils and gases, coal and rock and all other valuable mineral substances found in solution or otherwise in and upon the aforesaid premises, to have and to hold the same for the term of twenty years from this date; or as long as oil is found in paying quantities; also the right of way to enter upon said premises for the purpose of operating, mining or removing said oil and gases therefrom, and for the laying of pipes either under or on said surface, for transportation of oil and gas, and full power to erect all necessary buildings and tanks upon said premises, for the purpose of procuring and storing said oils and gases, with the full right to the said second party of appropriating to its own use all of the oils and gases found upon said premises during said term. In considera-
151 tion whereof the said second party agrees to give the said first party one-tenth (1/10) part of the oil and gases produced and saved from said premises to be delivered on said premises to the party of the first part. The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not to disturb any tillable land unless absolutely necessary to carry out the terms of this lease.

In case an encumbrance of any kind shall appear against the above-described premises, or any claim which does or might interfere with the full free and un-terrupted enjoyment and use thereof by the said second party as aforesaid, said first party agrees to pay off, discharge and satisfy the same.

In default thereof said second party may satisfy the same
151½ by applying in payment thereof, all oil reserved to said first party as above mentioned until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks and for fuel for drilling and operating all wells under this lease; and the right of way is hereby granted to the party of the second part to build, construct, lay down and maintain ditches and pipes in and upon said premises to convey water to the works of said party of the second part for use therein and thereabouts. The said second party hereby agrees to sink two (2) wells and complete three (3) derricks on or before May 1st 1887 on the following-described property to wit: One to be on the S. W. ¼ S. W. ¼ sec. 15 and the others to be on either the N. E. ¼ N. E. ¼ sec. 22 or the S. E. ¼ S. E. ¼ sec. 15. township 19 S. R. 69 W. Said wells to be sunk subject to the conditions of a certain lease from S. J. Tanner to A. R. Gumaer which lease is recorded in Book 28 pages 368, 369, 370, 371, of the record of Fremont county Colo.—said lease providing for one-tenth (1/10) royalty. Said second party shall have the right and power to remove their machinery derricks, tools and fixtures and any other property at any time from said premises.

If the party of the second part fails to keep and perform the

covenants and agreements therein by him to be kept and performed, then this lease shall be null and void and surrendered to the party of the first part. It is agreed that the foregoing stipulations and agreements shall apply to and bind the heirs, executors administrators and assigns of the respective parties hereunto.

A. R. GUMAER. [SEAL.]

Witnessed by—
——, ——.

152 STATE OF COLORADO, } ss:
Fremont County, }

I, Charles E. Waldo, — in and for said county, in the State aforesaid, do hereby certify that A. R. Gumaer, personally known to me to be the person whose name is subscribed to the annexed lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and my seal this twentieth day of December, A. D. 1886.

[Notarial Seal of Chas. E. Waldo.]

CHAS. E. WALDO,
Notary Public.

Know all men that —— ——, of the county of Fremont and State of Colorado, the part- of the second part in the within contract described, made by —— —— to —— —— on the — of ——, 188–, do hereby assign, transfer, and set over the said contract unto —, with all the property, rights of property, interests, power, and possession of every kind therein conveyed to —.

To have and to hold to —, my assignee — aforesaid, and to — legal successors in said property and rights and to — assigns forever.

In witness whereof — have hereunto set hand and seal this — day of ——, in the year 188–.

—— ——.

Signed, sealed, and delivered in the presence of—
—— ——.

STATE OF COLORADO, } ss:
County of Fremont, }

153 I, —— ——, do hereby certify that on — day of ——, 188–, before me, a — in and for said county, personally came —— ——, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged that they executed and delivered the same as — free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this — day of ——, A. D. 188–.

—— ——.

STATE OF COLORADO, } ss:
Fremont County, }

I, J. H. Peabody, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is *as* a full, true, and complete copy of a certain oil lease as the same appears of record in Book 28, at pages 448, 449, and 450 thereof, of the records of Fremont county, Colorado.

Witness my hand and official seal, at Canon City, in said county and State, this 19th day of May, A. D. 1887.

[SEAL.] (Signed) J. H. PEABODY,
County Clerk & Recorder.

Endorsed: Certified copy of oil lease. A. R. Gumaer to Colorado Oil Company. U. S. circuit court, district of Colorado. Colorado Oil Company *vs.* A. R. Gumaer *et al.* Exhibit C. Nov. 3, 1887. (S'g'd) Chas. E. Waldo, notary public.

154 EXHIBIT D.

CANON CITY, COLORADO, *May 20th*, 1887.

S. A. Josephi, Esq., gen'l manager for Colorado of the Colorado Oil Co., Canon City, Colo.:

DEAR SIR: As you know, I was unlawfully arrested while in your service and because in your service — the sheriff of Fremont county at the instance of Mr. A. R. Gumaer. I am unable to be put to the expense of prosecuting him for this unlawful arrest and the false imprisonment which followed it; nevertheless, desirous that he should be punished for the outrage, I therefore request you to so far favor me as to be at the expense of employing counsel and conducting the litigation; and in consideration that you will do so I hereby agree that you or the general manager for Colorado of your company shall have control of the suit, and that you or your successor or the company advancing any moneys towards the expense of such litigation shall have a first lien on the judgment and may reimburse yourselves out of the first proceeds for all such advancement, with interest, and I hereby also authorize you or your successor or any person whom the company or you or your successor may appoint in the premises to settle and adjust such litigation and release the cause or action at any time in your discretion.

Very truly, ——.

(Endorsed:) U. S. circuit court, district of Colorado. Colorado Oil Co. *vs.* A. R. Gumaer *et al.* Exhibit D. November 3, 1887. (S'g'd) Chas. E. Waldo, notary public. Filed Oc*y.* 7th, 1887. G. E. Dudly, cl'k.

155 EXHIBIT E.

J. Wallace, president; A. R. Gumaer, gen. man'g'r for Colorado.

FLORENCE, *May 25th*, 1887.

FRIEND FREAD; Mr. S. A. Josephi Sent this Paper to me and want ed me to send et to you and i told him i would he wants y yo Sine it and Send it back as Soon as you can Henerey Severs and Peat Worden and myself have Sined Ours and he is wating to get yours back and then will go ahead with it

Write as Soon as you get this Give my love to all the folks Good By from a friend

(Signed) CHAS. LEFEVER

(Endorsed:) U. S. circuit court, district of Colorado. Colorado Oil Co. *vs.* A. R. Gumaer *et al.* Exhibit E. Nov. 3, 1887. (S'g'd) Chas. E. Waldo, notary public. Filed Oct. 6th, 1887. G. E. Dudly, Co. judge.

EXHIBIT F.

Whereas on the 6th day of October, 1886, I, the undersigned, executed to one A. R. Gumaer, of the county of Fremont and State of Colorado, a certain lease to lands in said county and State near the town of Florence; and whereas litigation has arisen between said Gumaer and the Colorado Oil Company as to the ownership of said lease; and whereas, also, I am contemplating making some change in said lease with said Gumaer: Now, therefore, I hereby agree with said company that in case said lease shall be decreed to be the property of said company then in that event, any suit change
156 which may be made in the said lease with said Gumaer, unless said company shall accept the same and may at its election go on under the terms and conditions of said lease of Oct. 6th, 1886, which lease I hereby agree is now in full force and effect.

(Signed) STEPHEN J. TANNER.

Florence, May 13th, 1887.

(Endorsed:) U. S. circuit court, district of Colorado. Colorado Oil Company *vs.* A. R. Gumaer *et al.* Exhibit F. Nov. 4, 1887. (S'g'd) Chas. E. Waldo, notary public.

In the Circuit Court of the United States of America in and for the District of Colorado.

COLORADO OIL COMPANY, Complainant,
vs.
AGUSTUS R. GUMAER and Another, Defendant.

Colorado Oil Company, complainant, to Charles E. Waldo, Dr.

To fees for taking testimony in behalf of said complainant in the above-entitled suit, as follows, to wit:

Attendance on November 1st, 2nd, 3d, and 4th, 1887, 4 days at $3			$12 00
64 folios of testimony, &c., at 20 cents			12 80
184 folios of copy furnished by request of complainant			18 40
Ten oaths administered to witnesses			1 00
Total fees of notary public			44 20
Witnesses' fees claimed and paid by notary for complainant:			
157 Aaron C. Henderson, 2 days' attendance at $1.50	3 00		
32 miles traveled, 15c.	4 80		
			$7 80
Jesse Frazer, 2 days' attendance at $1.50	3 00		
18 miles traveled at 15 cents	2 70		
			5 70
Amasa W. Lucas, 3 days' attendance at $1.50	4 50		
32 miles traveled at 15 cents	4 80		
			9 30
Stephen J. Tanner (who claimed to have been served with subpœna), 2 days' attendance at $1.50	3 00		
20 miles traveled at 15 cents	3 00		
			6 00
Charles P. Lefever, 3 days' attendance at $1.50	4 50		
20 miles traveled at 15 cents	3 00		
			7 50
Simeon A. Josephi, 4 days' attendance at $1.50			6 00
			$86 50

Received payment of the above bill from Colorado Oil Company, complainant above named.

[SEAL.] (Signed) CHAS. E. WALDO,
Notary Public.

Duplicate of above receipt is in hands of plaintiff's general manager.

In the Circuit Court of the United States of America in and for the District of Colorado.

COLORADO OIL COMPANY, Complainant,
vs.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY, Defendants.

Agustus R. Gumaer and The Florence Oil Company, defendants above named, to Charles E. Waldo, notary public, Dr.

To fees for taking testimony in behalf of said defendants in the examination of complainant's witnesses in said suit, as follows:

Cross-examination of Aaron C. Henderson	1,233	words.	
Cross-examination of Jesse Frazer	1,738	words.	
158 Cross-examination of Charles P. Lefever	4,523	words.	
Cross-examination of Simeon A. Josephi	4,671	words.	
Total	12,165	words.	
To 122 folios of testimony at 20 cents			$24 40
To copy of 184 folios, furnished on request of defendants, at 10c.			18 40
Total of fees due from defendants			$42 80

Received payment of the above bill from A. R. Gumaer, defendant.

[SEAL.] (Signed) CHAS. E. WALDO,
Notary Public.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

I, Charles E. Waldo, a notary public in and for the county of Fremont, in the State of Colorado, do hereby certify that the reason for taking the foregoing depositions is and the fact is that the testimony of the said witnesses is material and necessary for the plaintiff in the cause in the caption of the said depositions named, and that the said witnesses severally reside and at the time of the taking of the said depositions did reside at the county of Fremont, in the State of Colorado, and at a greater distance than one hundred miles from the city of Denver, where the court wherein the said cause is pending is appointed by law to be held.

I further certify that on the first day of November, A. D. 1887, and on the days afterwards in the said deposition mentioned,
159 whereupon the said witnesses were examined, I was attended at my office, in the town of Canon City, in the county of Fremont aforesaid, by Augustus Macon, Esq., solicitor and counsel for the said defendants, and by John G. Taylor, Esq., solicitor and counsel for the said plaintiff, and by the said witnesses, Aaron C.

Henderson, Jesse Frazer, Charles P. Lefever, Amasa W. Lucas, and Simoen A. Josephi, who were and each of whom was of sound mind and lawful age, and the said witnesses were by me severally carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions aforesaid were by me reduced to writing in the presence of the said witnesses respectively, and from their statements (I personally, and not by another, used the caligraph, wherewith I wrote said depositions), and after carefully reading the same to the said witnesses they severally subscribed the same in my presence and severally made oath that the same were true and correct. I have retained the said depositions in my possession for the purpose of sealing and directing the same, with the certificate of the reasons aforesaid for taking the said depositions, with my own hand to the court for which the same were taken; and I further certify that I am not of counsel nor attorney for either of the parties in the cause in the said depositions and caption named nor in any way interested in the event of the said cause. I further certify that the exhibits hereunto attached and respectively marked Exhibits A, B, C, D, E, and F are the exhibits referred to in said depositions as being introduced and so marked, and also that the bills of costs and fees hereunto attached are true and correct accounts of the costs paid to me by the several parties hereto.

In testimony whereof I have set my hand and notarial seal this fourth day of November, in the year of our Lord one thou-
160 sand eight hundred and eighty-seven.

(Signed) CHAS. E. WALDO,
[SEAL.] *Notary Public.*

My commission will expire on December 12th, 1887.

(Endorsed:) 2161. United States circuit court, district of Colorado. Colorado Oil Co. *vs.* A. R. Gumaer *et al.* Depositions Aaron C. Henderson, Jesse Frazer, Chas. P. Lefever, Amasa W. Lucas & Simoen A. Josephi, S. J. Tanner for complainant. Opened, published, and filed Mar. 29, 1888. (S'g'd) William A. Willard, clerk.

And afterwards and on the same day, to wit, the 29th day of March, A. D. 1888, there was opened, published, and filed in said court and in said cause the deposition of Isaiah Josephi on behalf of complainant, and the said deposition is in words and figures as follows, to wit:

Deposition of I. Josephi Behalf Complainant.

In the Circuit Court of the United States for the District of Colorado.

THE COLORADO OIL COMPANY, Complainant,
versus.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY, Defendants. } In Equity.

161 STATE OF NEW YORK, }
City and County of New York, } *ss:*

The deposition of Isaiah Josephi, of the city and county of New York and State of New York, a witness of lawful age, produced, sworn, and examined upon his corporal oath on this 3rd day of February, 1888, at the office of Charles Nettleton, No. 115 Broadway, in the city of New York, county of New York, and State of New York aforesaid, by me, Charles Nettleton, a notary public in and for the county and State of New York, residing in New York city, county and State aforesaid, duly appointed by a *dedimus potestatum* issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States and the seal of said court affixed thereto and to me directed as such notary public, for the examination of the said Isaiah Josephi, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein The Colorado Oil Company is complainant and Augustus R. Gumaer and The Florence Oil Company are defendants, in behalf of the said complainant, as well as on the cross-interrogatories of the said defendants, which were attached to the said commission, as upon the interrogatories of the complainant, which were attached to the said commission, and upon none others.

The said ISAIAH JOSEPHI, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the complainant as the defendant-, in relation to the matters in controversy between the said complainant and defendants, testified and deposed as follows:

162 1st. Interrogatory first. State your name, age, occupation, and place of residence.

A. Answer. My name is Isaiah Josephi; aged 35 years. I am by occupation a merchant and I reside in New York city, New York.

2nd. Interrogatory second. Do you know the defendant Augustus R. Gumaer? If so, how long have you known him?

A. Answer. I know Augustus R. Gumaer. I first became acquainted with him in Canon City, Colorado, in December, 1886.

3rd. Interrogatory third. What was your connection with the

complainant, Colorado Oil Company, in December, 1886, and how long have you been so connected with that company?

A. Answer. In December, 1886, I was vice-president and trustee of the Colorado Oil Company. I have been such vice-president and trustee since the organization of said company, in October, 1885.

4th. Interrogatory fourth. State whether or not in December, 1886, you visited Canon City and Florence, in Fremont county, Colorado; and, if so, for whose behalf.

A. Answer. Yes, I did. I visited those places at the time named for the purpose of looking after my individual business interests.

5th. Interrogatory fifth. For what purpose did you make this visit to Fremont county, Colorado, and what instructions had
163 you, if any, before leaving New York as to what you should do on arriving at said Fremont county? If such instructions were in writing, please attach a copy thereof to your deposition or the originals, if you have them, or if such instructions were oral give the substance thereof as fully as you can recall the same and from whom the said instructions were received.

A. Answer. I had no instruction whatever from any source, but while in Colorado and being largely interested as the largest individual stockholder in the Colorado Oil Company I visited Canon City and Florence to look after my interests.

6th. Interrogatory sixth. State, as fully as you can recall, what negotiations or transactions occurred between yourself, acting for the Colorado Oil Company, and the defendant Gumaer while you were at Fremont county, Colorado, in December, 1886.

A. Answer. It then became evident to me that the company was in need of a different manager for Colorado, and I then requested Mr. Gumaer to resign, and he consented to do so. He sent his resignation to the company, and it was accepted by them. Mr. Gumaer was notified of the acceptance and a new general manager elected.

7th. Interrogatory seventh. Do you recollect having received from the said Gumaer while at Canon City on the occasion above inquired of certain leases by him granted to the Colorado Oil Company authorizing the extraction of oil from certain premises? If yea, state whether at that time any of the officers or directors of the said company except yourself were aware, to your knowledge, of a lease which had before that time been granted by Stephen J.
164 Tanner to the said Gumaer for a large tract of lands, including those described in the leases granted by Gumaer to the Colorado Oil Company.

A. Answer. I do remember receiving under protest certain lease from Mr. Gumaer of certain Tanner lands, but to my knowledge no other trustee or officer of the Colorado Oil Company, other than myself, was cognizant of the fact that Mr. Gumaer had taken a lease from Mr. Tanner in his own name, and I had no knowledge of his having taken such a lease until my arrival in Canon City.

8th. Interrogatory eighth. Did you at that time know anything about any representations which had been made by the said Gumaer to Jacob Wallace, Esq., in respect to the Tanner lands or in respect

to whether a lease could be procured of said lands from the said Stephen J. Tanner?

A. Answer. I did not. Mr. Jacob Wallace, president of the company, had stated in a meeting of the board of trustees of the company that Mr. Gumaer was instructed to procure all the leases that he could for the company in proximity to our developed ground, and that Mr. Gumaer had promised to do so. Mr. Wallace had also on various occasions said that we ought to have leases on the Tanner lands, but that Gumaer could not get leases thereon because Tanner wanted to sell. He also consulted with me in regard to buying these lands in order to secure the oil rights for the Colorado Oil Company.

9th. Interrogatory ninth. State, when you returned to New
165 York next after your visit to Fremont county, above mentioned, whether you then reported to the officers or directors of the Colorado Oil Company the fact that such leases had been granted by said Gumaer to the Colorado Oil Company, and what was said by the directors or officers of the Colorado Oil Company in respect to said leases, and what steps, if any, were taken or authorized by said directors in respect to said leases. Give the time of your report to the officers and directors of the Colorado Oil Company in respect to said leases and when, if at all, objections were made thereto by said officers or directors.

A. Answer. At a meeting of the board of trustees of the Colorado Oil Company that I attended after my return to New York, which I think was the first Monday in February, 1887, I stated what I had done in regard to Mr. Gumaer and my reasons therefor. I stated at that time that I took the leases from Mr. Gumaer under protest; that our well No. 8 was on this property, and derricks for other wells, all of which had been purchased, directed, and done at the company's expense; that I had said left leases with the new general manager. The trustees declined to receive said leases and authorized the new general manager to bring suit for the recovery of the original lease from Tanner to Gumaer.

10th. Interrogatory tenth. State any other matter or thing within your knowledge which may be of benefit or advantage to the said plaintiff on the trial of this action.

166 A. Answer. I cannot state anything further, except to confirm what facts I have already set forth.

To the several cross-interrogatories propounded to the witness in behalf of the defendants he answers as follows:

1st X. Cross-interrogatory one. If you have stated in answer to interrogatory 5 of your answer-in-chief that you came to Fremont county, Colorado, in December, 1886, upon the business of the Colorado Oil Company, plaintiff in this action, you will then please state what such business was and with whom, and also state just what, if anything, you did concerning said business.

A. Answer. I did not so state. I visited Colorado on my own personal business and on my own behalf. My visit to the seat of operations of the Colorado Oil Company was incidental, and while there I did what I thought would benefit my own interests as the largest individual stockholder of the Colorado Oil Company.

2nd X. Cross-interrogatory two. If you have stated in your answer to the last preceding question herein that a part of your business for and on behalf of the plaintiff company, which you transacted for it while in Colorado on or about the month of December, 1886, was the settlement of certain litigation then pending in Colorado wherein said company was a party, state then specially and particularly just what you did in reference to the said litigation, and you will please state the sums of money or the value of the property or rights involved in such litigation.

167 A. Answer. I did not so state.

3rd X. Cross-interrogatory three. If you have in your answer to the last preceding question stated that a part of your business on behalf of said plaintiff company was the adjustment and settlement of certain suits then pending in the courts of that State, wherein said company were parties and in which it was interested, and that you did effect such settlement, you will then please state what, if any, action said plaintiff company took, if any, in regard to its confirmation or rejection of your said action in that behalf, and, if said company did take any such action in regard to your said acts in their behalf, state how and in what manner, and, if such action is evidenced by writing, append as a part of your answer to this interrogatory a copy of the same; also state who acted in making such writing or record and when the same was made.

A. Answer. I did not so state.

(Signed) ISAIAH JOSEPHI.

Taken, reduced to writing, subscribed in my presence, and sworn to before me this 3rd day of February, A. D. 1888.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal this 3rd day of February, A. D. 1888.

(Signed) CHARLES NETTLETON,
Notary Public for New York, State of New York,
117 Broadway, N. Y. City.

168 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Charles Nettleton, of the city and county of New York and State of New York, a notary public, duly appointed to take the deposition of the said Isaiah Josephi, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Isaiah Josephi as a witness in the said suit between the said The Colorado Oil Company, complainant, and Augustus R. Gumaer and The Florence Oil Company, defendants, he was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me, Charles Nettleton, as such notary public, and reduced to writing in my presence and under my direction and in the

presence of the witness by E. J. Bunker, a disinterested third person, a clerk in my office, at my office, No. 115 Broadway, in the city of New York, county of New York, on this 3rd day of February, A. D. 1888, and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witness by me, and that thereupon the same was signed and sworn to by the said deponent, Isaiah Josephi, before me at the place and on the day and year last aforesaid.

And I further certify that I am not of kin, counsel, or attorney or in any manner interested in the event of this suit.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal this 3rd day of February, A. D. 1888.

(Signed) CHARLES NETTLETON,
Notary Public for New York, State of New York,
117 *Broadway, N. Y. City.*

169 Commissioner's fees for taking the foregoing deposition, including disbursements, am't $21 75

Paid by pl'ff.

(Signed) CHARLES NETTLETON,
Notary Public, &c.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Charles Nettleton, before whom the annexed deposition was taken, was, [SEAL.] at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 4th day of Feb., 1888.

(Signed) JAMES A. FLACK, *Clerk.*

170 *Dedimus Potestatum, United States Circuit Court, District of Colorado.*

In the Circuit Court of the United States for the District of Colorado.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States of America to Charles Nettleton, Esq., a notary public, residing at New York, in the county of New York and State of New York, Greeting:

Whereas it has been represented that Isaiah Josephi is a material witness in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein The Colorado

Oil Company is plaintiff and Augustus R. Gumaer and The Florence Oil Company are defendants, and that the said witness resides at New York, New York, aforesaid, without the said district of Colorado, and that his personal attendance cannot be procured at the trial of the said cause:

Now, know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, as commissioner to examine the said witness, and you are therefore authorized and required to cause the said witness to come before you, at such times and place as you may therefor designate and appoint, and diligently to examine the said witness, on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories and cross-interrogatories attached to these presents on the part of the said plaintiff and none other and the same, when thus taken, together with this commission and the said interrogatories, to certify into the said
171 circuit court of the United States in a sealed envelope with the least possible delay.

[SEAL.] Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 21st day of November, A. D. 1887, and of the Independence of the United States the 112 year.

(Signed) WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

In the Circuit Court of the United States for the District of Colorado. In Equity.

COLORADO OIL COMPANY, Complainant,
v.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY, Defendants.

To the above-named defendants and to Augustus Macon Esq., and John M. Waldron, Esq., their solicitors:

Please take notice that on the 21st day of November, A. D. 1887, at the hour of 10 a. m. of said day, or as soon thereafter as the matter can be heard, we will apply to the clerk of the said court to issue a commission, directed to Charles Nettleton, Esq., a notary public residing at the city of New York, in the county and State of New York, or to some other proper officer to be nominated by the clerk, authorizing and requiring the commissioner so appointed to take the examination and deposition of Isaiah Josephi, on
172 behalf of the plaintiff herein, upon interrogatories, with a copy of which you are now herewith served, when and where you may file cross-interrogatories, if you desire.

Very respectfully, your obedient servants,
(Signed) WELLS, McNEAL & TAYLOR,
Plaintiff's Solicitors.

Dated this November 2nd, A. D. 1887.

Received a copy of the above notice and the attached interrogatories this November 10th, A. D. 1887.

(Signed) A. MACON,
Defendants' Solicitor.

[Endorsed:] 2161. Notice & proof of service. Filed Nov. 12, 1887. (S'g'd) William A. Willard, clerk.

(Endorsed:) 2161. U. S. circuit court, district of Colorado. The Colorado Oil Company *vs.* Agustus R. Gumaer *et al.* Deposition of Isaiah Josephi, for complainant. Opened, published, and filed Mar. 29, 1888. (S'g'd) William A. Willard, clerk.

And afterwards and on the same day, to wit, the 29th day of March, A. D. 1888, there was opened, published, and filed in said court and in said cause the deposition of Jacob Wallace on behalf of complainant, and the said deposition is in words and figures as follows, to wit:

173 *Deposition Wallace Behalf Complainant.*

In the Circuit Court of the United States for the District of Colorado.

THE COLORADO OIL COMPANY, Complainant,
versus
AGUSTUS R. GUMAER, THE FLORENCE OIL COMPANY, Defendants.
} In Equity.

STATE OF NEW YORK,
City and County of New York, } *ss:*

The deposition of Jacob Wallace, of the city & county of New York and State of New York, a witness of lawful age produced, sworn, and examined upon his corporal oath on this 21st day of November, A. D. 1887, at the office of Charles Nettleton, No. 115 Broadway, in the city of New York, county of New York and State of New York aforesaid, by me, Charles Nettleton, a notary public in and for the county and State of New York, residing in New York city, county and State aforesaid, duly appointed by a *dedimus potestatum* issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States and the seal of said court affixed thereto and to me directed as such notary public for the examination of the said Jacob Wallace, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein The Colorado Oil Company is complainant and Augustus R. Gumaer and The Florence Oil Company are defendants, in behalf of the said complainant, as well on the cross-interrogatories of the said defendants as
174 upon the interrogatories of the complainant which were attached to the said commission and upon none others.

The said JACOB WALLACE, being first duly sworn by me as a witness in the said cause, previous to the commencement of his

examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the complainant as the defendants, in relation to the matters in controversy between the said complainant and defendants, testified and deposed as follows:

1st. Interrogatory first. State your name, age, residence, and occupation.

A. Answer. My name is Jacob Wallace; I am 32 years of age; I reside in New York city, State of New York; I am a merchant and manufacturer.

2nd. Interrogatory second. What, if any, official position do you occupy in The Colorado Oil Company, complainant herein?

A. Answer. I am president of The Colorado Oil Company, complainant herein.

3rd. Interrogatory third. If you answer that you occupy any official position in said corporation, state how long you have sustained such official relation to said company and what your duties in said position are and have been.

A. Answer. I have been president of the Colorado Oil Company since its organization October, 1885. My position has been that of looking after the general welfare of the company and urging forward its progress and success.

175 [C. N., Not. Pub.]

4th. Interrogatory fourth. Are you acquainted with the defendant Augustus R. Gumaer; and, if yea, how long have you known him?

A. Answer. I met Mr. Gumaer in June, 1886, at Canon City, Colorado.

5th. Interrogatory fifth. When, how, and by whom, if you know, was said Gumaer employed as a manager of the complainant's business in Colorado?

A. Answer. Mr. Gumaer was elected general manager of the Colorado Oil Company on July 5th, 1886. I was at that time in Colorado looking after the interests of the company. I met Mr. Gumaer and arranged with him to accept the position of general manager. I wrote to the directors in New York recommending the removal of Mr. Peabody for cause as general manager of the Colorado Oil Company and the election of Mr. Gumaer for said position, which recommendation was duly acted on and Mr. Gumaer elected as general manager of the Colorado Oil Company on the 5th day of July, 1886, notice thereof being duly sent him, and his acceptance of the position, dated Canon City, July 12th, 1886, is now in our possession.

6th. Interrogatory sixth. If you state that you represented the company in employing said Gumaer, state for what purposes he was employed and what, if any, directions or instructions were given him as to his duties.

176 A. Answer. Mr. Gumaer became general manager of the company with the complete knowledge of what his duties were and with fair promises to push developement and the company

to success rapidly. I took a great deal of pains to explain fully and in detail every point regarding the condition of the company's affairs and the probabilities and possibilities of its success. I was fully aware that Mr. Gumaer was not a practical oil man, but we had a foreman who was fully capable to do this part of the work, and Mr. Gumaer promised to keep a supervision over it to see that the work was economically and honestly done and to look after the general interests of the company and all other duties. I regarded him as an exceedingly active and energetic man. He was instructed to take general charge of the company's affairs and business in the State of Colorado.

[C. N., Not. Pub.]

7th. Interrogatory seventh. State whether or not any instructions or directions were given to said Gumaer at the time of or in connection with his employment as to the leasing or acquiring other lands for the company than those already held; and, if yea, state fully what was said on that subject.

A. Answer. Yes; full instructions were given him, and very urgent ones, to at once secure as much more territory by lease as possible in or around our then proved-up oil territory. I stated to Mr. Gumaer that it would be very important to secure for the Colorado Oil Company an extention of the Lowback lease; also additional acreage if possible; also to secure leases on the Frazier,
177 Tanner, and McCanless lands; in fact all that belt of land lying between the town and the river, below and above, as I regarded it all as good; also stated to him that part of these lands had been promised to the company, and if he thought I had better remain and secure them I would. He said he would give it all his attention; I need not worry about it.

8th. Interrogatory eighth. Had you any knowledge at or before the time of said Gumaer's employment that he owned or claimed to own or had any contract for any interest in lands supposed to be coal or oil lands in proximity to the property of the Colorado Oil Company in Fremont county?

A. Answer. Yes; he told me, "I've got about 160 acres that I leased McCanless some time ago; I've been paying him $20 a month for the lease instead of putting down a well, and if you will put down a well and comply with the lease I'll let you have it." I think he said the whole of it was about 160 acres; I do not remember particularly.

9th. Interrogatory ninth. State whether you were informed at of before the employment of the said Gumaer, as the Colorado manager of complainants corporation's business, that said Gumaer had contracted with one Stephen J. Tanner, or claimed to have done so, for an interest by purchase, lease, or otherwise, in any part of section fifteen (15), sixteen (16), or twenty-two (22), in township nineteen (19) south, of range sixty-nine (69) west, in said Fremont county.
178 A. Answer. No.

10th. Interrogatory tenth. If you had any conversation with said Gumaer at any time in regard to said lands or any of

them, or any land alleged to belong to said Tanner or spoken of by said defendant as the lands of said Tanner, state when and where such conversation occur-ed and all that was said by either party in regard to the matter. If more than one such conversation occur-ed, state the time and place of each and what was said at each if you can recall it.

A. Answer. Between the 25th of June and the 5th of July, 1886, I had several conversations with Mr. Gumaer in different places, but all in Fremont county, Colorado; perhaps some of our conversations took place in Pueblo; in these conversations Mr. Gumaer and myself talked with regard to the land of Mr. Tanner, as well as all the other lands belonging and adjoining the company's land. In these conversations Mr. Gumaer said to me, Tanner owes about ten thousand dollars on his land, and he wants to sell to pay off the mortgage. I think I can recall one of the conversations: When we were talking of getting leases Mr. Gumaer said, The Tanner ground is good ground to have, but we cannot get it. I can get an option on that from some one (whose name he did not mention) who has got an option on there for $34,000 to buy it. Tanner owes about ten thousand dollars and would like to sell to pay off the mortgage; Wallace, that is good ground and the company ought to buy it. I do not remember that I made any reply to it, as I wanted leases and was not authorized to buy land for the company. I
179 am unable to state where any one of these conversations took place. Either then or at another time he said Tanner could not make a lease for it; it would interfere with his selling it; I am confident he said I can get an option. He led me to believe that the company could buy the ground at any time, but that the company could not get a lease; he said the ground was worth $34,000 for farming purposes. The Atchison Company wanted the ground to keep stock on for pasture; this property was referred to several times and this is about the gist of the conversation each time.

I was with Mr. Gumaer a large part of the time between the 25th of June and the 5th of July, and our conversations were largely upon the affairs of the company and the lands which it was desirable for them to obtain—in most of our conversations. I was with him so much and talked with him so much about the affairs of the company and on general subjects that I am unable to state any matter as occur-ing at any one particular conversation between us or as occur-ing at any one particular place.

11th. Interrogatory eleventh. State whether you, at the time of the employment of the said Gumaer, or the corporation complainant expressly agreed or in any manner consented that said Gumaer might procure from said Tanner a lease to himself of any land in the vicinity of the company's property in Fremont county and hold the same for himself individually and not for the company?

A. Answer. I did not nor did the corporation, either direct or by implication, ever give any such consent, but, on the contrary, on more than one occasion directly the opposite was stated, and
180 the whole tenor of the instructions given were to secure leases

on the Tanner land and other lands on this side of the river between Florence and the river for the Colorado Oil Company.

12th. Interrogatory twelfth. Are you acquainted with one Samuel H. Baker, an attorney-at-law, residing in Fremont county? And, if yea, state whether or not he was retained by the complainant corporation as its counsel as early as the 6th day of October, 1886. And, if yea, how long had he been so retained?

A. Answer. Yes, I am acquainted with Samuel H. Baker, one of the firm of Waldo & Baker, Canon City, Colorado, who were retained by our company as its counsel some time prior to the 6th day of October, 1886, but exactly how long before I do not remember; several months before, I am sure.

13th. Interrogatory thirteenth. If in answer to the next preceding interrogatory you state said Baker was retained attorney of the said corporation at and before the date indicated, state whether or not said Gumaer, to your knowledge, had information on or before the 6th day of October, 1886, of the fact that the relation of attorney and client existed between said Baker and complainant corporation.

A. Answer. Certainly Mr. Gumaer knew that Mr. Baker was the attorney of the complainant corporation before the 6th of October, 1886. Mr. Baker accompanied me from his office over to the Exchange bank and introduced me to Mr. Gumaer while acting
181 as our attorney and counsel. This was some time in June, 1886. The fact that Mr. Baker was retained attorney of the complainant corporation was on several occasions a subject of conversation between Mr. Gumaer and myself prior to the 6th of October, 1886, and I told Mr. Gumaer that Mr. Baker, as our attorney, could aid him in getting leases. Some of Waldo & Baker's bills for services rendered on behalf of the company passed through Mr. Gumaer's hands as general manager of the company in the month of August, 1886, and I think other bills later, but before the 6th of October.

14th. Interrogatory fourteenth. If any power of attorney or other written authority or employment of any kind was given said Gumaer by the corporation, please annex the same or a duplicate, if you have it, and, if not, a copy, to your deposition, and if you have neither a duplicate, the original, or a copy and the original is in the possession of the said defendant or is lost or destroyed so that you cannot produce it state as nearly and as fully as you can remember the date and contents of the same, particularly as to the powers and duties of said Gumaer.

A. Answer. Mr. Gumaer was elected general manager of the Colorado Oil Company on July 5th, 1886; he was duly notified of his election; he received a copy of the by-laws. In addition to this we forwarded to him on July 20th a power of attorney, of which a copy cannot be found. This power of attorney has never been returned to the company, although Mr. Gumaer has been requested to return it.

As near as my recollection serves me, the power of attorney was given Mr. Gumaer to enable him to act for the company in re-

gard to defending certain lawsuits and, in fact, giving him
182 the very broadest powers possible to protect and take care of the company's affairs in Colorado. I also signed an instrument of writing bearing date July 9th, 1886, which, to the best of my knowledge, was published in Colorado papers on or about its date. I think, further, that it was sent out as a circular letter and distributed. It reads as follows:

"NEW YORK, *July 9th*, 1886.

To all whom it *amy* concern:

This certifies that at a regular meeting of the Colorado Oil Company, held at the city of New York July 5th, 1886, D. G. Peabody was removed from the office of the general manager for Colorado of said company and Mr. A. R. Gumaer, of Canon City, Colorado, was elected to fill the vacancy.

Notice is hereby given that from and after the 5th day of July, A. D. 1886, Mr. A. R. Gomaer is the authorized general manager for Colorado of the Colorado Oil Company, and that no obligation contracted in behalf of this company in Colorado by any other person will be recognized by this company, and all persons are hereby warned against dealing with any person in behalf of this company other than A. R. Gumaer, general manager for Colorado.

Witness my hand this 9th day of July, 1886.

(Signed) J. WALLACE,
President Colorado Oil Company."

I think that this certificate was also recorded in the recorder's office, Canon City.

On the 21st of July, by my direction, the secretary of the company wrote a letter to Mr. Gumaer and sent it to him with a certi-
183 fied copy of the by-laws of the company, and also enclosing a certified copy of the minutes of a meeting of July 5th, and also 21 oil leases of lands to the company and other lease and valuable papers, which are mentioned in the latter part of the letter.

A true and correct copy of that letter is hereto attached, marked Exhibit No. 1, C. N., notary public, November 23rd, 1887.

The letter, Exhibit 1, was intended to give Mr. Gumaer a full list of all the property of the plaintiff company and of the interests the company had in any property in Colorado which he was to take charge of and have the care of as general manager of the company.

Mr. Gumaer acknowledged the receipt of the letter of which Exhibit 1 is a copy and of the contents, leases, and other papers sent with that letter on the 27th of the same month of July. I do not annex the original letter of Mr. Gumaer as an exhibit, but I will send it to the plaintiff's attorney, so that they may have it in court at the time of the trial of this action.

Mr. Gumaer also acknowledged the receipt of the power of attorney sent to him on the 20th of July on the 26th of July, 1886.

15th. Interrogatory fifteenth. State when the complainant cor-

poration or you, its president, or its board of directors or managers in New York first became aware of the execution to the corporation of two certain leases or contracts from the defendant Gumaer bearing date respectively the 12th day of October, 1886, and the 20th day of December, 1886.

184 A. Answer. Some time in January, 1887.

16th. Interrogatory sixteenth. State what, if any, authority or instructions or directions Isaiah Josephi or other person had from the complainant corporation or any of its managing officers to make or accept such leases or contracts; also what, if any, action in relation thereto the said corporation took when informed as to the making thereof, and how such action was taken, and what, if any, notice was given defendant Gumaer thereof, and if such notice was in writing attach a copy of the same to your deposition.

A. Answer. Mr. Isaiah Josephi had no authority whatever nor any other person or instructions or directions from the complainant corporation or from any of its managing officers to make or accept such leases or contracts.

No action was taken by the corporation in regard to these leases and no notice was given to the defendant Gumaer.

17th. Interrogatory seventeenth. State whether or not the said leases or contracts from defendant Gumaer of dates October 12th and December 20th, 1886, were ever in any way ratified, approved, or accepted by you or the complainant corporation.

A. Answer. No; they were not.

18th. Interrogatory eighteenth. State whether the machinery, tools, material, funds, or labor of the complainant corporation were used by defendant Gumaer in the sinking of wells or erection of derricks on any of the property described in the said leases

185 from defendant Gumaer, bearing date October 12th and December 20th, 1886, by the permission or direction of you or said corporation; and, if yea, state when it was then known to you or the corporation that defendant Gumaer claimed to have owned and leased the same to the corporation under the terms expressed in said leases or contracts under dates last aforesaid.

A. Answer. The tools, machinery, material, funds, and labor expended and used on wells 8, 9, and 10, situated on said leases, were the property of the Colorado Oil Company and were so used by the said defendant, Gumaer, under his general instructions to take care of the property of the company and of its interests, and to procure leases of oil territory for the company, and not under any special direction or permission given for that purpose. It was not known to me or to the corporation or to any officers of the company, so far as I have knowledge, that Mr. Gumaer claimed to have owned a lease on the Tanner land which he subleased to the corporation under the terms expressed in said leases or contracts of October 12th and December 20th, 1886, until some time in the month of January, 1887. I knew that Mr. Gumaer was putting down wells 8, 9, and 10, but I did not know that he had obtained a lease from Mr. Tanner under which he was putting down those wells or which he had subleased or intended to sublease to the company.

19th. Interrogatory nineteenth. State when and by what means you were first informed of the execution by said Stephen J. Tanner of the lease to said defendant, Gumaer, mentioned in the bill of complaint in this cause, for lands in sections fifteen (15), six-
186 teen (16), and twenty-two (22), in township No. nineteen (19) south, of range sixty-nine (69) west, in Fremont county, Colorado.

A. Answer. I first learned from Mr. Isaiah Josephi, on his return to New York from Fremont county, Colorado, in January, 1887, that Mr. Gumaer had gotten a lease from Tanner of the lands mentioned in this interrogatory. He told me our well No. 8 was on this Tanner tract and that we had no security for it whatever, as Mr. Gumaer had taken said leases from Tanner in his own name and not in that of the company's; that he, Mr. Isaiah Josephi, had taken the lease of December the 20th, covering this part of the company's property under protest, in order to have the property on which the wells were sunk and derricks were being erected in the name of the company. Mr. Josephi said one well, number 8, derricks for number 9 and number 10, which we were about to build, were not on ground owned by the company. I demanded the Tanner lease, and this is all he would give. He made this report personally to me. I do not remember that we had a board meeting about that time, but when we did have we talked the matter up, but did not accept these leases of October 12th and December 20th. We declined to consider them. Then followed the communication between Mr. S. A. Josephi (our present general manager and our general manager at that time) and myself, which resulted in this suit being brought. That was in March, 1887.

Mr. Isaiah Josephi went out to Colorado on general business of his own and promised, if possible, while there to compromise the lawsuits between Mr. Peabody and the company. He had no authority to arrange this lease business with Mr. Gumaer,
187 and until he got back not a single other officer or director of the company knew anything about the Tanner lease. No other director of the company except myself was ever in Colorado after his (Mr. Gumaer's) appointment, and from the time I left, in July, until his successor was elected, about the 22nd of December, he was the sole representative of the company's interest there.

20th. Interrogatory twentieth. If you had any letter or telegrams from the defendant Gumaer in regard to the affairs of the complainant corporation, the sinking or boring of any wells, or any other matters state where said letters and telegrams now are.

A. Answer. I have letters and telegrams from Mr. Gumaer in my possession and have them with me here in Mr. Nettleton's office, where I am now giving testimony.

21st. Interrogatory twenty-first. State any other matter or thing which you may know of advantage to either party in this suit.

A. Answer. In answer I would state that Mr. Gumaer was elected general manager of the company and the salary paid him was $250 a month. Mr. Gumaer was elected on my recommendation. This recommendation was made by me owing to the fact that, having had

an unsatisfactory previous manager, I desired one that I regarded as responsible and active. Mr. Gumaer was introduced to me by Mr. Baker, one of the counsel of the company. I regarded Mr. Gumaer as an energetic and pushing man and, being at the same time cashier of the Exchange Bank of Canon City, a position
188 which I regarded as one of trust and that no man could hold without being favorably thought of in the community, I regarded him as a very desirable man for the position and presumed that he would use all his best efforts for the interest of the company. I confided in him fully the affairs of the company, showed him the necessity of procuring leases at once, and urged upon him his prompt action in regard to this matter, especially lands in proximity to our then proved up and developed lease of McCandless. I recollect particularly being with him at wells Nos. 3 and 4, being situated on the McCandless lease; 5 was not started at that time, nor wells of any higher numbers. When we left No. 4 we walked up to Florence and I think Mr. Charles Le Fevre was with us. I recollect, during this walk, that I instructed Mr. Gumaer to get a more extensive lease from Lowback; also to get the time extended on the lease we then had; I also urged him, if possible, to get a lease on the Tanner and Frazier lands; also additional lease on the McCandless. I recollect I said to him we ought to have the strip between the town and the river; I also said to him, if it was necessary for me to remain a few days to secure these leases I would do so; I told him I thought McCandless had about two hundred acres in all and I wanted the Frazier, Tanner, and McCandless leases; that Frazier and McCandless had promised us all we wanted. Gumaer said, yes, we ought to have all that ground and he would give it his attention. Mr. Gumaer secured several leases for us, both from McCandless and Frazier; also State lease, and had instruction, as previously stated, to secure the lease from Tanner, if possible.

The subject of securing leases upon these several properties
189 has been a matter of correspondence between myself and Mr. Gumaer.

To the several cross-interrogatories hereto annexed and propounded to him the witness, Jacob Wallace, answers and deposes as follows:

1st X. Cross-interrogatory one. If in answer to Int. No. 2 you say that you are the president of the complainant company, please state how long you have been acting as such president and if prior to your appointment as president you had any other relation or connection with the company; and, if yea, state what that relation or connection was.

A. Answer. I have been acting as president of the Colorado Oil Company ever since the company was organized, October 18, 1885. I have never held any other office or any other relation to it.

2nd X. Cross-interrogatory two. Please state fully and explicitly what your duties in the position of president are and have been.

A. Answer. My duties have been to look after the general interests of the company, to push its progress, to visit the field of active

operations in Colorado and see that the affairs of the company were being honestly and industriously administered. In fact, I have exercised a general supervision over all its affairs.

3rd X. Cross-interrogatory three. If in answer to Int. No. 5 you state that you are acquainted with the defendant Augustus R. Gumaer, please state where you first made Mr. Gumaer's acquaintance; and, if you state that it was in the State of Colorado,
190 please state where and how it came that you were at that time in the State of Colorado, for what business you came to the State of Colorado, how long you remained in said State at the time, and all other matters and things connected with your visit to the State of Colorado, so far as the same in any manner relates to the Colorado Oil Company or to the defendant Gumaer.

A. Answer. I formed Mr. Gumaer's acquaintance in Canon City, Colorado. I was introduced to him by one of our counsel, Mr. Samuel H. Baker, of the firm of Messrs. Waldo & Baker. I was on a visit to Colorado in the interest of the Colorado Oil Company, looking after the company's property, &c., and development of the same. I remained in Colorado on this visit 15 to 20 days. Our previous general manager had failed to impress me as pushing the company's interests as fast as he could. I became dissatisfied and was trying to make a settlement with him. Being unable to get at any satisfactory understanding, and differences arising, I called on the counsel of the company, Messrs. Waldo & Baker, for advice and aid, being almost a total stranger in the county and State. I really knew no one with whom I could entrust the company's interests or propose to the corporation as a new general manager for Colorado, but I was satisfied that a change had to be made in this office. This led to my introduction to Mr. Gumaer and arranging with him to accept the office of general manager of the Colorado Oil Company.

4th X. Cross-interrogatory four. If, in answer to the 6th interrogatory, you state that you represented the company in the employment of said Gumaer, please state what action, if any, the board of directors took with reference to said employment, and state
191 whether or not, when you came to Colorado at the time you so employed Gumaer, any action had been taken by the board of directors in the premises; and, if any such action was taken, please insert in your answer to this interrogatory a copy of the proceedings, stating when the proceedings of which you insert a copy were had and entered upon the minutes or records of said company and if there was any action taken by the directors of said company after your employment of the said Gumaer. Please insert in the answer to this interrogatory a copy of whatever record was made by the said board of directors touching said employment, and state explicitly when the record of which you made a copy was made; and if there was any record made concerning the employment of the said Gumaer prior to your employing him for the said complainant company, please state under and by what authority you assumed to employ a general manager for the said company.

A. Answer. Prior to my visit to Colorado, at the time when I

first met Mr. Gumaer, he was unknown to me and to the board of directors of the company, who all resided in New York, except Mr. Peabody, who was then in Colorado, and I presume knew Mr. Gumaer. While I was in Colorado I was first introduced to Mr. Gumaer, as I have already stated, and I arranged with him to accept the position of general manager of the company and promised to have him elected to that office by the board of directors of that company. I immediately wrote to the officers of the company in New York city informing them of the state of affairs and recommending the removal of the previous general manager and the electing of Mr. Gumaer to fill the vacancy.

192 A meeting of the board of directors was held in the city of New York on July 5th, 1886, at the office of the company, when the previous general manager was removed and Mr. Gumaer was elected to fill the vacancy. A record of the proceedings of the board of directors electing Mr. Gumaer as such general manager was made in the minutes of the company and reads as follows:

"JULY 5TH, 1886.

A regular meeting of trustees of the Colorado Oil Company was held this day.

Present: Isaiah Josephi, Adolph Castor, and E. H. Gardner. A quorum being present, in the absence of president the vice-president occupied the chair.

* * * * * * *

Upon motion of E. H. Gardner, election was held to fill the office of general manager for Colorado, and three ballots being cast for A. R. Gumaer, said A. R. Gumaer was declared elected general manager for Colorado."

I did not employ Mr. Gumaer as general manager myself prior to the foregoing action of the board of trustees. I simply arranged with him to accept the office, feeling satisfied that any one that I would recommend would be elected by the board.

5th X. Cross-interrogatory five. If in answer to the 7th Int. you say that you did give instructions to the said Gumaer at the time of or in connection with his employment by you as the general manager of the said company as to the leasing or procuring of other lands for the company than those already at that time held,

193 please state whether or not any such instructions or directions were given in writing, and, if they were and you have them or a copy of them or can procure them, please attach them as exhibits to this deposition, and, if you gave the said Gumaer any instructions or directions concerning the matter mentioned in the 7th interrogatory, please state by what authority you gave him such instructions or directions, whether orally or in writing, and, if you state that you were authorized by the complainant company to give such instructions, please state when and how you acquired said authority, and, if such authority was given to you by any action of the board of directors, please insert as a part of the answer to this cross-interrogatory a copy of the record made by the said board of

directors touching said authority, and also state explicitly when the said record was made, and, if any action at all was taken by the board of directors upon the subject duties of or the powers conferred upon the said Augustus R. Gumaer, whether the same were made before or after his appointment as general manager of the company, please insert as a part of the answer to this cross-interrogatory a copy of such record and state explicitly when the said record was made.

A. Answer. I do not remember that I ever gave any instructions to Gumaer while in Colorado, in writing; the instructions that I gave him while there were all oral, but immediately upon my return to New York and continuously thereafter there was correspondence and instructions in regard to this matter. Instructions given Mr. Gumaer were not given him by any special authority given me by the board of directors to that effect, but
194 as a duty I owed to the company as its chief officer and supervisor.

6th X. Cross-interrogatory six. If you make answer to the 8th Int. touching your knowledge at or before the time of said Gumaer's employment as to whether or not he owned or claimed to own or had any contract for any interest in lands supposed to be coal or oil lands in Fremont county please state whether or not you made any inquiry of the said Gumaer touching any alleged or supposed interest in him of such lands, and state whether or not you prohibited or directed the said Gumaer that he should not own or have any interest in any such lands, and state whether or not you had any conversation with the defendant Gumaer upon the subject of any such ownership, and state whether or not Mr. Gumaer made any representations to you at or about the time of his said employment touching or in any way relating to the ownership or claim of ownership by him in any such lands, and if you had any such conversation with the said Gumaer at or about the time of his said ployment, please state the same fully and clearly, giving in full all that you said and all that was said in reply by the said A. R. Gumaer.

A. Answer. No; I made no inquiries of Mr. Gumaer touching any alleged or supposed interest he had in coal or oil lands in or around Florence or in proximity to the Colorado Oil Company's property. Mr. Gumaer told me that he had an oil lease on 160 acres of the McCandless property for which he was paying $20 a month rent instead of sinking a well. I do not remember that I ever said anything to Mr. Gumaer prohibiting him from owning oil or coal lands in the Arkansas valley. In regard to our
195 conversations about the ownership of lands, I always told him that we did not care to buy lands, but I always urged Mr. Gumaer to secure leases, if possible, of oil lands in proximity to our developed ground for the company. On several occasions I insisted that we ought to have five hundred acres or more in one body just north of Florence, between the river and Florence. Mr. Gumaer did say to me that he was interested in the lands of the Beaver Land Company, and, in fact, drove me down over this ground to show me

a model fruit farm that he was starting. These lands are several miles below Florence and below the break that occurs across the basin just below Florence, and are not now known to be oil lands; don't think the ground has yet been prospected.

Mr. Gumaer and myself talked about the Beaver Land Company's lands and several other tracts lying in that vicinity towards Pueblo, being oil land, and that he could get as many leases on those lands as he was a mind to for himself. I did not regard those Beaver Land Company's lands or any land in that vicinity as being oil lands. The lands near Florence and in proximity to the lands already leased by the Colorado Oil Company I regarded as oil territory and time and again expressed a wish, and more than a wish, instructed him, to procure leases of all the lands that we could in the neighborhood of the oil company's property and for the oil company.

I asked him to procure some oil leases on State lands in the lower basin on the south side of the river, where I knew there were some school lands unoccupied. He subsequently did secure leases of about 4,600 acres of land for the company, as I wished him to.

196 7th X. Cross-interrogatory seventh. Please state whether or not at or before the time of your employment of the said Gumaer, in behalf of the said company, concerning his interest in or ownership of lands or interests in lands supposed to be coal or oil lands in Fremont county and the Colorado Oil Company, in Fremont county, and if you had conversations with any person whomsoever upon such subject please state with whom that conversation was had, and state explicitly whether or not you did have such a conversation upon such subjects with one D. G. Peabody, then a resident of Canon City, in Fremont county, in which said conversation the interest or ownership of the said Gumaer in the kind of lands referred to in the 8th interrogatory was the subject, and in which conversation you then learned that the said Gumaer had held and claimed interests in said land in proximity to the property of the Colorado Oil Company, in Fremont county.

A. Answer. I do not remember having had any conversations with Mr. D. G. Peabody or with any other person than Mr. Gumaer himself in which I learned that he held and claimed interest in any coal or oil land situated in proximity to the property of the Colorado Oil Company, in Fremont county.

8th X. Cross-interrogatory eig-th. Did you not upon the occasion of your visit to Colorado when you employed the said Gumaer as manager of the complainant company, and but a short time before said employment, have a conversation with Samuel H. Baker, at that time attorney for the complainant company, and did not the said Baker in said conversation inform you, in speaking of

197 the contemplated employment of the said Gumaer, that he owned interests in coal or oil lands adverse to the said complainant company and in the immediate vicinity of the lands of said company in Fremont county, Colorado, and upon which lands the wells of the company were sunk and were then being operated; and did not said Baker in such conversation then mention the identical

land referred to in the bill of complaint in this cause by the company, known as and called the Tanner lands? In answer to this interrogatory please state fully and completely all that was said by Mr. Gumaer or said Baker or either of them upon the occasion of such conversation upon this subject and all that was said by you in reply thereto. Give the full conversation.

A. Answer. I do not remember that any such conversation ever occurred.

9th X. Cross-interrogatory ninth. State whether or not while you were in Colorado upon the occasion of your employment of the said Gumaer you were at Canon City, the county-seat of Fremont county, and, if you were, state how long you were in and about Canon City, and state whether or not you examined the records in the recorder's office of said Fremont county with reference to titles of oil lands or liens or encumbrances upon the same, in which the company that you represented desired or expected to become interested, and state what opportunities, if any, you had for the examination of the record relating to land title in said office. State fully.

A. Answer. I was in Canon City and Florence, backwards and forwards, from 15 to 20 days, all told. I made no examina-
198 tion of the records in the recorder's office regarding land titles or liens or encumbrances upon lands. My time for the first 4 or 5 days was fully occupied in trying to make a settlement with our previous general manager; afterwards in securing a new party for the position and looking after the property of the company, as the previous general manager had been taken sick and was confined to his house. I had no time to examine the land records in the recorder's office.

10th X. Cross-interrogatory ten. State with how many persons you conversed at Canon City, Colorado, or Florence, Colorado, or in Fremont county, Colorado, upon the subject of the fitness of the defendant Gumaer for the position of general manager of your company, and mention, if you now can remember, the names of those with whom you talked upon the subject, and state whether or not in such conversations the fact that Gumaer was and had been interested in oil lands in said county was mentioned, and, if you had any such conversations, please state them as fully as you can now remember them.

A. Answer. I conversed with quite a number of people in Florence and Canon City, but with scarcely any one on the subject of Mr. Gumaer's fitness for the position as general manager. As previously stated, they were all strangers to me and most of them introduced to me by Mr. Gumaer. I did not inquire much as to the fitness of Mr. Gumaer. The position he held in the community was recommendation enough, and, in addition to this, one of our counsel had introduced him to me, and I thought I was a judge of nerve and go when I saw it. I sized Mr. Gumaer up
199 and I thought he was the man the company wanted. In none of these conversations was the fact that Mr. Gumaer was interested in oil lands in said county mentioned.

11th X. Cross-interrogatory eleven. Did you not learn when you

were in Fremont county upon the occasion of the employment of Mr. Gumaer that Mr. Gumaer was and had been interested in oil lands in said county and in boring and prospecting for oil, and did you not learn that he was at that time connected with a company that was engaged in exploring and prospecting and drilling for oil in the immediate locality in which were situated the oil lands of your said company, and did you not learn before his said employment that at that time and for a long time theretofore he had been connected with a company known as the Land Investment & Coal & Oil Mining Company, which company was organized for the purpose of owning oil lands and prospecting for oil in the county of Fremont and State of Colorado?

A. Answer. No; to each and every part of this question.

12th X. Cross-interrogatory twelve. If you state that you employed the defendant Gumaer in behalf of the said company as its general manager, please state why you so employed him. Did you not upon and before the occasion of his employment learn and know that he had been and was interested in oil lands, and that he had had experience in exploring for oil, and that he had been connected with oil ventures in the said county of Fremont, and did you not employ him because you regarded him as an experienced man in said business and one fitted to be trusted with the
200 management of the affairs of the company organized for exploring, for manufacturing and refining oil? And, if you should state that you were not influenced by the above reasons, please state fully what induced you to employ said Gumaer for and in behalf of said company.

A. Answer. There were quite a number of reasons and urgent reasons at the time for my considering Mr. Gumaer a suitable party for the position of general manager of the Colorado Oil Company. Our previous general manager had proved unsatisfactory, and we were desirous of procuring a new man as general manager of the company. Our previous manager was demanding more than he was entitled to and was about to give us trouble, and I for-saw that the Colorado Oil Company was on the eve of being involved in a lawsuit which would require sureties in Colorado. I called on Mr. Gumaer with one of our counsel, Mr. Samuel H. Baker, with a view of arranging, if it became necessary, for such sureties. At that time Mr. Baker had by his actions, &c., intimated that such a salary as our general manager was then receiving would not have to go begging in Colorado for a good man to take hold of it—or, in other words, he led me to believe that he would like to have the position very much himself. Having given me a little history of his exploits, I came to the conclusion that he was not just the man I wanted.

I related this whole affair in confidence to Mr. Gumaer and asked him what interest his bank would allow on a round deposit and at the same time if he could arrange for me or for the company to furnish securities, if it became necessary, upon these conditions. I mean the condition that I should make a round deposit in
201 the bank which should remain there in the nature of a collateral to whoever went security for the company, if security

should become necessary. He said it could be arranged all right. I went on to tell Mr. Gumaer fully the condition of the company, &c. I think I stated to him at that time that we had a competent driller, &c., who could take charge of the company's property for the moment. All that I wanted was to know that the funds of the company and its general business interests were safe until such a moment that I could secure a competent man to take the position of a general manager of the company.

This led up to conversations in regard to how our general manager had been administering the affairs of the company, and I proceeded to give full vent to my opinions on the subject; also stated that I knew hardly anybody in Colorado, in fact nobody at all except our employees, as our previous general manager had studiously avoided having me meet any one to become acquainted with them during the short time I spent in Canon City. I told him that things were going wrong, and I gave him a few instances in detail. He immediately volunteered his assistance in helping me to find out quite a number of things, which opened my eyes wider as to how things were going on the company's matters than I had previously seen, and seemed to be disposed to see that I should have fair play although a stranger.

About this time a little occurrence at the wells of the company brought out an open disrupture between myself and the then general manager, which led to my action afterwards in preferring charges against him and having him removed and *and* sending in Mr. Gumaer's name to fill the position.

202 The foregoing are some of the reasons why I arranged with Mr. Gumaer to become the general manager of the company. I was not aware of the fact that Mr. Gumaer was interested in oil lands, or that he had had experience in exploring for oil, or that he was a practical oil man, or that he had been connected with oil ventures in Fremont county, Colorado, prior to the time that I arranged with him to become the general manager of the Colorado Oil Company, except that he told me that he had a lease of 160 acres of land for oil purposes from McCandless. I did not employ him because I regarded him as an experienced man in the oil business or as one fitted especially as an expert with the management of the affairs of a company organized for exploring for oils or for manufacturing and refining oil. I did not have any knowledge that Mr. Gumaer claimed to have had any experience in the oil business the time when I arranged with him for the employment of the Colorado Oil Company.

I have stated in the early part of my answer to this 12th interrogatory many of the reasons which induced me to employ Mr. Gumaer on behalf of the Colorado Oil Company.

13th X. Cross-interrogatory thirteen. If, in answer to the 15th Int., you state when it was you first became aware of the execution to the corporation of certain leases or contracts from the defendant Gumaer, bearing date respectively the 12th day of October, 1886, and the 20th day of December, 1886, please state whether or not you received two letters from the said A. R. Gumaer, each letter

being dated upon the 21st day of August, A. D. 1886, in which the said A. R. Gumaer wrote to you upon the subject of what is
203 known as the Tanner land, it being the same land referred to in the bill of complaint of complainant company; and, if you did, please annex to this deposition and as a part of this answer the said original letters.

A. Answer. I have but one letter in my possession from A. R. Gumaer, dated August 21st, 1886. I decline to part with the original letter, but I do and will annex hereto as an exhibit a true and correct copy of that one letter. It is marked Exhibit No. 2, C. N., notary public, November 30th, 1887. I will send the original letter to the attorneys of the complainant company, so that they may have it present on the trial of this cause.

I have looked for another letter of that date and do not find any.

14th X. Cross-interrogatory fourteen. Did you not upon the 28th day of August, A. D. 1886, address and mail the defendant Gumaer a letter at Canon City, Colorado, which letter you commenced as follows:

"Your letters 21st and T. D. 26th rec'd;" and, if you did write and mail such letter, please state to what letters you referred in the language "your letters 21st rec'd." Please annex to this deposition as a part of your answer the letters referred to in your letter of August 28th, 1886, to the defendant Gumaer as having been received.

A. Answer. Yes; I wrote a letter to the defendant Gumaer dated the 28th of August, 1886, and mailed the same to him at Canon City, Colorado, which letter commenced as is indicated in this 14th interrogatory. I cannot find but one letter from Mr. Gumaer
204 to me, dated the 21st of August, and that letter I have annexed a copy of to this deposition and it is marked Exhibit No. 2. I cannot recollect any other letter of date August 21st or find any letter of that date to which I refer in my letter of August 28th.

15th X. Cross-interrogatory fifteen. Did you not receive a letter from defendant Gumaer from Canon City, Colorado, dated October 7th, 1886, in manner following, "10, 7th, 1886," which letter was addressed to you as president of the complainant company and in which said letter he made a proposition to you as follows: "If you will drill two wells on Tanner tract, adjoining McCandless lease, say one in pumping distance of No. 6 and the other on east side of said tract, and commence derrick for third rig, I will give you 40 acres of the McCandless lease, all at ⅛ royalty—that is to say, the three wells' production and the 40 acres, all to be ⅛ royalty. You are not required to do any work on the 40-acre tract. Both leases are good for 20 years or as long as oil is found in paying quantities;" and in which said letter he used the following language: "You understand these are lands that I have had option on before I acted for the company;" and if you say that you received such a letter, please attach said letter to this deposition and as a part of this answer.

A. Answer. Yes; I received a letter from Mr. Gumaer dated October 7th, 1886, which I believe to be the letter inquired for in this cross-

interrogatory. I decline to part with the original letter, but I will and do make and annex a true and correct copy of that letter to
205 this my deposition as a part of my answer to this 15th interrogatory. It is hereto annexed, marked Exhibit No. 3, C. N., notary public, November 30th, 1887.

16th X. Cross-interrogatory sixteenth. Did you not, immediately upon the receipt of the letter from the defendant Gumaer mentioned in the last interrogatory, send a dispatch to the said Gumaer, of which the following is a copy: "New York, 11th. To A. R. Gumaer, G. M., Canon City, Colo.: Without consulting trustees cannot consent to lease at more than one-tenth royalty. (Signed) J. Wallace, pres't"? And if you say you did send such a dispatch to the said Gumaer, please state to what lease you referred, and did it not refer to the lease that was mentioned in a letter *to* the said Gumaer to you dated upon the 7th day of October, 1886, and which letter you are asked to attach to your deposition in the last preceding interrogatory? And if you should say that the said dispatch does not refer to the said lease, please attach to this deposition and as a part of this answer any letter or communication from the said Gumaer touching any lease to which you may say the said dispatch was an answer.

A. Answer. I have no copy of any telegram sent Mr. Gumaer such as is quoted in this 16th cross-interrogatory. I have an indistinct recollection that at some time after the receipt from Gumaer of the letter, Exhibit No. 3, I dictated to my book-keeper a telegram to be sent to Mr. Gumaer in the following terms: "Without consulting trustees cannot consent to leases at more than one-tenth royalty."

Mr. Gumaer had written several letters previous to this letter of the 7th of October, Exhibit No. 3, stating that lands could
206 not be had better than an eighth royalty on lands in proximity to the company's property, and I presume this telegram was in answer to all of these leases which he had talked of getting for the company at one-eighth royalty. I had in my mind the shutting off of all propositions to take leases to the complainant company on one-eighth royalty at the time that I dictated that telegram.

17th X. Cross-interrogatory seventeenth. Did you not receive from the said Gumaer a telegraphic dispatch dated October 12th, 1886, from Canon City, Colorado, of which the following is a copy: "J. Wallace, president, 304 Greenwich street, New York: O. K. I accept proposition $\frac{1}{10}$th; have commenced work number six 880; write ab't Robinson matter; struck oil showing about 2 bbls. A. R. Gumaer, gen. m'n'g'r." And if you say you did receive such a dispatch, please state whether or not the proposition referred to therein by the said Gumaer as being accepted was not the proposition concerning the lease mentioned in his letter of October 7th, 1886, to you, and concerning which you sent the dispatch to Gumaer from New York upon October 11th, referred to in the last preceding interrogatories.

A. Answer. Yes; I did receive such a telegram from Mr. Gumaer

on the 13th of October, 1886, but have never yet understood this proposition contained in Mr. Gumaer's letter of the 7th; as previously stated, I did not investigate this matter or look into it closely, as the telegram mentioned as possibly having been sent after the receipt of this letter was one of common acceptance and not
207 referred to by me in any of my correspondence. Mr. Gumaer was in full charge and authorized to take leases for the company; he never sent to our office here or to me the original or a copy of a lease based upon any such proposition as he claims had been agreed to, and to have been made by him in his letter of October the 7th.

Mr. Gumaer's letter of the 7th is difficult to understand. It may have two meanings—one just as consistent as the other. I did not understand the letter when I first received it. I do not understand now what Mr. Gumaer meant by it in relation to the Tanner land. Consequently my telegram of the 11th was not intended as a proposition in any way, but as a general direction or information to him as the manager of the company that the company would not take any oil leases of lands at one-eighth royalty.

18th X. Cross-interrogatory eighteen. State whether or not upon the receipt of the telegram set forth in the last preceding interrogatory you wrote any letter or sent any dispatch to the said Gumaer in which you disapproved of his acting as indicated in the said dispatch to you; if so, attach to this deposition as a part of this answer any such letter or communication and state whether or not you ever disapproved in any way of the said proposed lease and your modification of it contained in your telegram of October 11th to said Gumaer, which modification was accepted by his dispatch to you of October 12th hereinabove referred to.

A. Answer. I never in any way referred to the subject of these leases in any communication which I made to Mr. Gumaer after my telegram of the 11th of October.

208 19th X. Cross-interrogatory nineteen. Did you not on the 12th day of October, 1886, write to the defendant Gumaer from New York a letter that commenced, "Your letter and telegrams received; former I answered immediately by wire as requested"? And, if you say you did write and mail such a letter to the said Gumaer, please state to which you referred in such letter by the language "your letter and telegrams received; former I answered immediately by wire as requested." Did not the said letter refer to the letter of A. R. Gumaer to you dated October 7th, 1886, and did not the "telegrams" refer to his telegrams to you dated upon the 7th and 12th days of October, 1886, or one of them?

A. Answer. Yes; I did address Mr. Gumaer a letter on the 12th of October, 1886, in which I used the language mentioned. The said letter must have been that of October the 7th, 1886, and the telegram also that of the 7th, in which Mr. Gumaer asked me to ignore the previous proposition in regard to leasing the 160-acre tract so frequently referred to in my testimony and which he in that communication stated was the only lease that could be procured in the valley, with the exception of about 25 acres which McCandless

proposed giving us at the same royalty; also in answer to a telegram of his of the 11th, in which he reports progress on a certain well, and it was not in answer to his telegram of the 12th, for this was a night message and not received by me until the morning of the 13th.

20th X. Cross-interrogatory twenty. Did not A. R. Gumaer send you a telegram upon the 7th day of October, 1886, of which
209 the following is a copy: "J. Wallace, president, 304 Greenwich street, New York: 6 down, 500 feet ignore my proposition on 3rd. Make new one to-day. (Signed) A. R. Gumaer, gen. m'n'g'r." And, if you say you received such a dispatch, state whether or not the said proposition you were therein directed to ignore was not a proposition relating to the said Tanner lands in a letter written by the said Gumaer to you upon the 3rd day of October, 1886; and, if you have the said letter of October 3rd, 1886, from Gumaer to you as president of the said company, please attach the same to this deposition as a part of this answer? And was not the proposition contained in the letter of Gumaer to you of October 7th, 1886, the proposition referred to in the telegram last herein mentioned as the new proposition he would make to you that day?

A. Answer. Yes; I received such a telegram, also his letter of the 3rd, of which I attach herewith a copy, marked Exhibit No. 4. I will send the original to our attorneys in Colorado. The said proposition speaks for itself; it does not in any way refer to the Tanner lands, but it is the lease of 160 acres he claimed to have had from McCandless previous to his accepting the position of general manager, which has heretofore been so often mentioned. Yes; the new proposition referred to in his telegram was evidently the one contained in his letter of the 7th.

21st X. Cross-interrogatory twenty-one. If you say you wrote a letter to defendant Gumaer from New York, dated October 12th, 1886, which commences, "Your letter and telegram received," etc., please attach to this deposition and as a part of the same answer the telegrams referred to in said letter and all the same, and
210 also attach the letter referred to in said letter of October 12th, 1886.

A. Answer. Yes; I did write Mr. Gumaer a letter on October 12th; that letter reads as follows:

"OCTOBER 12TH, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colorado.

DEAR SIR: Your letter and telegrams received; the former I answered immediately by wire as requested. As soon as I hear from you will have a talk with the directors regarding the leases. I trust that you will be able to send us the State and Frazier leases very soon, and I would like for you to try very hard for the McCandless and Loback leases. Referring to the Robinson letter, I wired you what, in my judgment, you should do in the premises. If I remember right, the outfit has a good boiler and engine, but the casing is in the well and would have to be drawn, which would be attended *to* some risk. Your telegram on No. 6 is very encouraging. I was down to

see Eaton, Cole, Burham Co. again to-day, and push all your orders along. I have also been working to get facts on the refining business and shall ply you with questions during the next few days. More again.

Yours very truly, J. WALLACE, *Pres't.*
B.

P. S.—Have you ordered the large tank?"

211 The letter referred to by me in my foregoing letter of the 12th of October was Mr. Gumaer's letter of the 7th, a true copy of which I have already annexed as an exhibit. It is marked Exhibit No. 3.

The two telegrams which I referred to were from Mr. Gumaer, dated the 7th and 11th of October. I decline to part with the original telegrams, but will send them to the counsel for the complainant company in this case, and I annex hereto true and correct copies of said telegrams, marked Exhibits Nos. 5 & 6, C. N., notary public, December 2nd, 1887. The original telegrams are also marked in the same way.

22nd X. Cross-interrogatory twenty-two. Please state what official position Isaiah Josephi held in the complainant company in December, 1886, and when he was appointed to such official position, and how long he *was* held the same.

A. Answer. Mr. Isaiah Josephi was elected vice-president of the Colorado Oil Company in October, 1885, when the company was organized; was re-elected to that office in October, 1886, and has held the position ever since.

23rd X. Cross-interrogatory twenty-three. Please state the residence of the said Isaiah Josephi, and, if he came to Colorado in December, 1886, or thereabouts, please state the object of the said visit, so far as complainant company is concerned.

A. Answer. Mr. Josephi is a resident of the city of New York. He went to Colorado in December, 1886. He went to Colorado on his own business, but he promised on behalf of the complainant to compromise and settle the Peabody lawsuit, if possible.

212 24th X. Cross-interrogatory 24. Is it not the fact that when the said Isaiah Josephi came to Colorado, in or about December, 1886, he came with special reference to the business of the complainant company, and was not a part of his business the settlement by the said company with the said Gumaer, who was about — retire from the general management of the said complainant company's business, and did he not have general power and authority with reference thereto? Please state fully what the said Josephi did when he came to Colorado and while in Colorado at the time mentioned with reference to the business of the said company and the change of its general manager. And was not the action of the said Isaiah Josephi with reference to the change of the general manager of said company ratified by the board of directors?

A. Answer. As previously stated, Mr. Josephi went to Colorado on business of his own; but, so far as the company was concerned,

he was to settle the Peabody suit if possible. The settlement of this suit with Mr. Peabody by Mr. Josephi was by my directions to him. That was all the power he had to act for the company when he left New York to go to Colorado.

When Mr. Josephi left New York to go to Colorado at this time I had no knowledge, neither did any other officer of the company to the best of my knowledge and belief, have any information at that time that Mr. Gumaer was about to resign his office of general manager of the Colorado Oil Company.

At the time Mr. Josephi was in Colorado he was a large stockholder in the Colorado Oil Company and also had several friends who also were stockholders in the company, and Mr. Josephi
213 at the time was vice-president and trustee of the company, as before stated. While so in Colorado Mr. Josephi made inquiry into the general business condition and affairs of the complainant company and found such a condition of things that he became dissatisfied with the management of Mr. Gumaer as to the affairs of the company, so much so that he asked Mr. Gumaer to resign his office of general manager of the company. Mr. Gumaer did resign, and his resignation, in writing, was sent to me as president of the company, and his resignation was accepted and approved of by the trustees of the company.

25th X. Cross-interrogatory twenty-five. If you have not got in your possession or under your control any of the letters or telegrams referred to in preceding interrogatories, please state why you have not got them and what has become of them, and, if you state any of them have been lost or destroyed, state which of them, and, if lost, state what search you have made for such. Please answer specifically, as above in this interrogatory asked, as to each of the said letters or telegrams which you have not got in your possession or under your control.

A. Answer. I have not stated in any of my answers that I have not got in my possession or under my control any of the letters or telegrams referred to in the preceding interrogatories, except I have no copy of a telegram sent by me to Mr. Gumaer (if I sent one) on the 11th or 12th of October, 1886.

(Signed) JACOB WALLACE.

214 Taken, reduced to writing, subscribed in my presence and sworn to before me this 21st day of November, A. D. 1887.

In witness whereof I have hereunto set my hand and affixed my official seal this 21st day of November, A. D. 1887.

(Signed) CHARLES NETTLETON,
Notary Public for New York, State of New York,
117 *Broadway, N. Y. City.*

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Charles Nettleton, of the city and county of New York and State of New York, a notary public duly appointed to take the deposition of the said Jacob Wallace, a witness whose name is subscribed

to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Jacob Wallace as a witness in the said suit between the said The Colorado Oil Company, complainant, and Augustus R. Gumaer and The Florence Oil Company, defendants, he was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me, Charles Nettleton, as such notary public, and reduced to writing in my presence and under my direction and in the presence of the witness by E. J. Bunker, a disinterested third person, a clerk in my office, at my office, No. 115 Broadway, in the city of New York, county of New York, on this 21st day of November, A. D. 1887, and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto, as written down, were read over to the said witness by me, and that thereupon the
215 same was signed and sworn to by the said deponent, Jacob Wallace, before me, at the place and on the day and year last aforesaid.

And I further certify that I am not of kin, counsel, or attorney or in any manner interested in the event of this suit.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal this 21st day of November, A. D. 1887.

(Signed) CHARLES NETTLETON,
Notary Public for New York, State of New York,
117 *Broadway, N. Y. City.*

STATE OF NEW YORK, } ss:
City and County of New York, }

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Charles Nettleton, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and au-
[SEAL.] thorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 4 day of Feb., 1888.

(Signed) JAMES A. FLACK, *Clerk.*

216 Commissioner's fees for taking the foregoing deposition are	$40 00
Copying & attaching exhibits	2 50
Postage & county clerk's fees	50
Paid by pl'ff.	$43 00

(Signed) CHARLES NETTLETON,
Notary Public, &c.

EXHIBIT No. 1. (Signed) C. N., Notary Public, November 23rd, 1887.

NEW YORK, *July 21st*, 1886.

Augustus R. Gumaer, Esq., general manager, Canon City, Colorado.

DEAR SIR: I herewith beg to hand you copy of by-laws duly certified to their correctness and also to the regularity of meeting of their adoption. I also beg to hand you certified copy of the minutes of the meeting of July 5th. I also enclose leases as follows:

No. 14092, James A. McCandless, recorded March 23rd, 1886, Book 28, pages 72, 73, & 74.

No. 10477, George H. Green and E. L. Green, recorded December 9th, 1882, Book 23, page 15.

No. 10481, Louisa W. Lucas, recorded December 9th, 1882, Book 23, page 23.

No. 10482, John W. Mack, recorded December 9th, 1882, Book 23, page 25.

217 No. 10492, Anna Thurman, recorded December 9th, 1882, Book 23, page 41.

No. 10478, Fred. D. Hahnenkratt, recorded December 9th, 1882, Book 23, page 17.

No. 10476, Robert Gaddis, recorded December 9th, 1882, Book 23, page 13.

No. 10480, J. H. Harrison, recorded December 9th, 1882, Book 23, page 21.

No. 10485, Philip A. McCumber, recorded December 9th, 1882, Book 23, page 29.

No. 10475, Warren R. Fowler, recorded December 9th, 1882, Book 23, page 11.

No. 10472, M. Mills Craig and Rebecca E. Craig, recorded December 9th, 1882, Book 23, page 5.

No. 10473, Harriet Curtis, recorded December 9th, 1882, Book 23, page 7.

No. 10488, Benjamin F. Rockafellow, recorded December 9th, 1882, Book 23, page 35.

No. 10493, Orange White, recorded December 9th, 1882, Book 23, page 43.

No. 10479, Cyrus R. Hainline, recorded December 9th, 1882, Book 23, page 19.

No. 10474, Sylvester H. Davis, recorded December 9th, 1882, Book 23, page 9.

No. 10486, Richard Parker, recorded December 9th, 1882, Book 23, page 31.

No. 10490, William A. Stump, recorded December 9th, 1882, Book 23, page 37.

No. 11927, Edwin Loback, recorded March 14th, 1884, in Book 23, page 505.

218 No. —, Jesse Frazier, not recorded.

No. —, John K. Brewster, not recorded.

I would also refer you to deed made by Samuel P. Dale, trustee,

to David G. Peabody, recorded in Book 27, pages 440, 441, August 20th, 1885, which we retain here, but will send you if you require it. Further beg to refer you to deed No. 13598, made by David G. Peabody to Colorado Oil Company, dated October 24th, 1885, and recorded November 2nd, 1885, Book 27, pages 503 to 508, inclusive, which we also retain, but will forward if required.

Also enclose mineral lease No. 1332, made by the State of Colorado to the Land Investment & Coal and Oil Mining Company, with attached letter of date August 5th, extending said lease one year, this original lease being under date the 30th day of July, 1884.

I also enclose copies of proposition made by David G. Peabody to the Colorado Oil Company; also copy of bill of sale of David G. Peabody to Colorado Oil Company, originals of which are in my possession and at your disposal.

Yours truly,

(Signed) E. H. GARDNER, *Secretary.*

EXHIBIT No. 2. (Signed) C. N., Notary Public, November 30th, 1887.

Exchange Bank of Canon City, Colo.

CANON CITY, COLO., *Aug.* 21*st*, 1886.

J. Wallace, Esq., p't.

D'R SIR: I just wired you that I was going to Denver to-
219 morrow; also that we were down 520 feet.

We have had very sticky drilling for the past 3 d's.

When I left the well this morning the last screw was fine drilling & we hope it may continue. I think we are going to get a good well. The sands & gass stratas are different from other wells. We struck more gass last night. The first is shut off.

If we get a good well out of No. 5, I must get in shape to handle the 440 acres that I have option on. The party absolutely refuses to take less than 34,000, the am't named in my option. No. 6 well we commence Monday putting up derrick; it is located where we talked; just at the edge of the lands that I hold option on. There is room for one well between No. 5 & 6; also between No. 4 & 5.

The Arkansas Valley Co. have all their wells on twelve acres ground & possibly it would not cover more than ten acres. They are putting down the 6th one.

Yours truly, A. R. GUMAER,
Gen. M'n'g'r.

EXHIBIT No. 3. C. N., Notary Public, November 30th, 1887.

Exchange Bank of Canon City, Colo.

CANON CITY, COLO., 10, 7*th*, 1886.

J. Wallace, Esq., p't.

D'R SIR: I wired you to ignore my proposition of the 3rd & *that* see new one which I make, viz: If you drill two wells on Tanner

tract adjoining McCandless lease, say one in pumping distance for No. 6 & the other on east side of said tract, and commence derrick for 3rd rig, I will give you forty acres of the McCandless
220 lease, all at $\frac{1}{8}$ royalty—that is to say, the 3 wells (production) and the 40 acres, all to be $\frac{1}{8}$ royalty. You are not required to do any work on the 40-acre tract. Both leases are good for 20 years, or as long as oil is found in paying quantities. I think I can sink two wells besides No. 6 (now sinking) within 90 d's, if possible 70 d's, unless we have some serious accident. Everything is working nicely now. You understand these are lands that I have had options on before I acted for the company. I consider this very valuable territory, and I can't get you as favorable lease, considering location, from any one. McCandless says positively that he will not lease balance of his Florence lands to any one, either at $\frac{1}{6}$ or $\frac{1}{8}$ royalty (or on any terms at present). Colo. Coal & Iron Co. refuse to lease their lands on any terms, & these are about the only lands in near vicinity what we think is best oil lands & convenient to work (near water, &c.). By the by, McCandless has ab't 75 acres (runs across the river). I wrote you 30 or 40 acres.

His lands off the mesa he has leased. He leased 40 & afterwards leased 320 acres (same parties). There isn't any water within several miles of this tract. He says party is obliged to commence work within ab't 20 d's, and if he does not commence we can have the lease. However, this would not interfere with the above work referred to.

I think I could drill four wells ab't as soon as I could drill one on those lands (including building of derrick & drilling).

Please wire me on receipt of this whether to go on with work under the above proposed lease. The work must be pushed, as I want to get some oil from No. 7, & possibly No. 8, in present con-
221 tract. I will get ready, so that work can be pushed rapidly on hearing from you. Don't fail to wire.

Yours truly, A. R. GUMAER,
Gen. M'n'g'r.

EXHIBIT No. 4. (Signed) C. N., Notary Public.

Exchange Bank of Canon City, Colo.

CANON CITY, COLO., 10, 3, 1886.

J. Wallace, Esq., president.

D'R SIR: I have located well No. 7 on Frazier lease, all lumber on the ground. In order to hold this lease we are not obliged to sink but the one well and that one we are not oblige- to push work rapidly.

The lower country, you know, is my choice and really no leases can be had in the valley, as my option covers all, which you know.

I will make this proposition to the company: If you will sink one well immediately—one within y'r & 3 more within 2nd & 3rd y'rs—I will give you right to put the five wells on the 160-acre lease

that belongs to me at one-eighth royalty & in such places as you may select from time to time. However, this lease will not prohibit me from leasing or sinking other wells on said lease. I think we can get lease from McCandless for ab't 25 acres more by drilling two wells at $\frac{1}{8}$ royalty. Of course we can handle
222 this in addition to my proposition. This will include about all McCandless' lands except his orchard & the land way off on the hillside. The latter he has leased 40 acres at $\frac{1}{8}$; says party — going to drill well soon.

Mr. McCandless has not promised me positive that he would give such a lease, yet I think he may.

In regard to Mr. Loback's lands, he will not lease even one hundred acres unless we agree to put down one well immediately & four others within 3 y'rs. I haven't written you, but no one hasen't produced over one-half bbl. per day, & Lefever says it never did while under Peabody's m'g'nt for Colo. Oil Co. I have known this for over — month, but overlooked writing you. I was deceived in the well on acc't of its pumping water. This is the only well that pumps water. In my opinion, we could not afford to sink more than one well for liberal lease to every one hundred acres. All the drillers say go East for good wells. You know we talked this when you was here.

The 160 acres owned by the company I consider better territory than the Loback farm.

If the company should buy the Robinson outfit we could sink well about as cheap on this land as we could on the Loback track, and I believe it is worth trying after awhile.

Kindly write me your views in regard to sinking on my lease, as I want to commence another derrick, No. 8, immediately.

Yours truly, A. R. GUMAER, *Gen. M'g'r.*

You had better wire me whether you accept my proposition or not, so that I may act accordingly.

223 EXHIBIT No. 5. (Signed) C. N., Notary Public, December 2nd, 1887.

The Western Union Telegraph Company.

Received at the Western Union building, 195 Broadway, N. Y., Oct. 7, 1886.

Dated Canon City, Col., 7.

To J. Wallace, pres't, 304 Greenwich St., N. Y.:

Six down five hundered feet ignore my proposition third make new one to-day.

A. B. GUMAER, *Gen. M'g'r.*

EXHIBIT 6. (Signed) C. N., Notary Public, December 2nd, 1887.

The Western Union Telegraph Company.

Received at 309 Greenwich St., Oct. 12, 188–.
Dated Canon City, Colo., 11, via 599 B'way, N. Y., 12.

To J. Wallace, Esq., pres't, 304 G'wich:

Down eight hundred gas enough run pumping well possibly two more than ever struck by either company.

A. R. GUMAER, *Gen. Mg.*

224 In the Circuit Court of the United States for the District of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to Charles Nettleton, Esq., a notary public residing at New York, in the county of New York and State of New York, Greeting:

Whereas it has been represented that Jacob Wallace is a material witness in a certain cause now pending in the circuit court of the — States for the district of Colorado, wherein The Colorado Oil Company is complainant and Augustus R. Gumaer and The Florence Oil Company are defendants, and that the said witness resides at New York aforesaid, without the said district of Colorado, and that his personal attendance cannot be procured at the trial of the said cause:

Now, know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority as commissioner to examine the said witness, and you are therefore authorized and required to cause the said witness to come before you at such times and place as you may therefor designate and appoint, and diligently to examine the said witness on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories and cross-interrogatories attached to these presents on the part of the said complainant and none other, and the same, when thus taken, together with this commission and the said interrogatories, to certify into the said circuit court of the United States, in a sealed envelope, with the
225 least possible delay.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this
[SEAL.] third day of November, A. D. 1887, and of the Independence of the United States the 112th year.

(Signed) WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

In the Circuit Court of the United States for the District of Colorado.
In Equity.

COLORADO OIL COMPANY, Complainant,
vs.
AGUSTUS R. GUMAER, THE FLORENCE OIL COMPANY, Defendants.

To the above-named defendants and to John M. Waldron and Augustus Macon, their solicitors:

Please take notice that on the 3rd day of November, A. D. 1887, at the hour of 9 in the morning of said day, or as soon thereafter as the matter can be heard, we shall apply to the clerk of the said court to issue a *dedimus potestatum* or commission to some proper officer, to be named by the clerk, residing at the city of New York, in the county and State of New York, authorizing and directing the person so appointed to take the examination and
226 depositions of Jacob Wallace, —— ——, witnesses on behalf of the complainant in the above-entitled suit, who reside at the said city of New York, upon interrogatories, with a copy of which you are now herewith served.

Dated this October 20th, A. D. 1887.

Very respectfully, your obedient servants,

(Signed) WELLS, McNEAL & TAYLOR,
Complainant's Solicitors.

Received a copy of the above notice and the annexed interrogatories this 22d day of October, A. D. 1887.

(Signed) A. MACON,
Defendants' Solicitors.

2161. Filed Nov. 3, 1887. (S'g'd) William A. Willard, clerk.

(Endorsed:) 2161. Circuit court U. S. Colorado Oil Co. *vs.* A. R. Gumaer *et al.* Deposition of Jacob Wallace, for complainant. Opened, published, and filed Mar. 29, 1888. (S'g'd) William A. Willard, clerk.

227 And afterwards and on, to wit, the 16th day of June, A. D. 1888, there was opened, published, and filed in said court and in said cause the depositions of Jacob Wallace and Isaiah Josephi on behalf of complainant, and the said depositions are in words and figures as follows, to wit:

Depositions Wallace and Josephi, Behalf Complainant.

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
v.
AGUSTUS R. GUMAER and FLORENCE OIL COMPANY.

To the above-named defendant, Agustus R. Gumaer, and to Agustus Macon, Esq., his attorney:

Please take notice that the deposition *de bene esse* of Jacob Wallace and Isaiah Josephi, who severally reside at the city of New York, in the county and State of New York, and more than one hundred miles from the city of Denver, where the court in which the above-entitled cause is pending is to be held, will be taken to be read in evidence on the trial of said cause on the part of the plaintiff, at the office of Nettleton & Mills, No. 115 and 117 Broadway, New York, room 20, on the 26th day of May, A. D. 1888, commencing at the hour of 10 a. m., at which time and place you can attend and cross-examine the said witnesses, if you see fit.

Dated this 17th day of May, A. D. 1888.

Very respectfully, &c.,
(Signed) WELLS, McNEAL & TAYLOR,
Plaintiff's Attorneys.

228 Received a copy of the above notice this 17th day of May, A. D. 1888.
(Signed) A. MACON,
Defendants' Attorneys.

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
vs.
AUGUSTUS R. GUMAER and FLORENCE OIL COMPANY.

STATE OF NEW YORK,
City and County of New York,
Southern District of New York, } *ss:*

Office of Nettleton & Mills, Nos. 115 & 117 Broadway.

NEW YORK, *May 26th*, 1888—10 o'clock a. m.

Present: Charles Nettleton, Esq., notary public; M. W. Platzek, Esq., counsel for plaintiff; James Dunne, Esq., counsel for defendants.

It is hereby agreed by the respective counsel for plaintiff and de-

fendants that the examination shall be adjourned until Tuesday, May 29th, 1888, at 10 o'clock a. m.

Attest: (Signed) CHARLES NETTLETON,
Notary Public for N. Y. County, N. Y.

229 In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
vs.
AUGUSTUS R. GUMAER and FLORENCE OIL COMPANY.

STATE OF NEW YORK,
City and County of New York,
Southern District of New York, } *ss:*

Office of Charles Nettleton, 115 & 117 Broadway.

MAY 29TH, 1888—10 o'clock a. m.

Present: M. W. Platzek, Esq., of counsel for plaintiff, and James Dunne, Esq., of counsel for defendants; Charles Nettleton, Esq., a notary public of the city and county of New York, in the State of New York, the officer taking said depositions in pursuance of annexed notice.

It is hereby stipulated by the respective counsel for the plaintiff and defendant that the testimony of the several witnesses taken in pursuance of the annexed notice may be reduced to writing by Emma J. Bunker, by typewriter, in the presence of the said Charles Nettleton and under his direction and in the presence of the said counsel for plaintiff and defendant and in the presence of the said witnesses, with the same effect as if written by the said Charles Nettleton with his own hand or by the said witness so giving testimony.

230 It is also stipulated that the said Emma J. Bunker is a disinterested person, not of counsel or attorney to either of the parties in the said cause, nor related in any way to either of the said parties nor in any manner interested in the event of the said cause.

(Signed) M. W. PLATZEK,
Attorneys for Plaintiff.
JAMES DUNNE,
Att'y for Defendants.

JACOB WALLACE, a witness called on the part of the plaintiff herein and residing in the city of New York, in the county and State of New York, and more than one hundred miles from the city of Denver, in the State of Colorado, where this cause is to be tried, being duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and being carefully examined, deposeth and says as follows:

Being examined by Mr. PLATZEK, of counsel for the plaintiff:

The defendants object to the testimony of Mr. Wallace on the ground that he has been before interrogated respecting the same matters.

1 Q. Were you the president of The Colorado Oil Company, the plaintiff, in January, 1886? Have you been president of that company ever since, and are you still?

A. I was and I am still president of the Colorado Oil Company.

2 Q. Do you know the defendant A. R. Gumaer?

A. I do.

3 Q. Where did you first meet him?

A. In Canon City, Colorado.

231 4 Q. What was his business at the time you first met him?

A. He was cashier of the Exchange bank at Canon City.

5 Q. Was he engaged in any other business, as far as you know, at that time?

A. No.

6 Q. Was he engaged in the oil business at that time?

A. No.

7 Q. You have been examined heretofore in this action, have you not?

A. I have.

8 Q. Did you know that Mr. Gumaer had a lease on what is known as the Tanner property when you were arranging with him to send in his name as manager of the Colorado Oil Company?

A. I did not.

9 Q. Did you know that Mr. Gumaer had an option for a lease on said property at that time?

A. I did not.

10 Q. Did Mr. Gumaer ever claim to you to have a lease or an option for a lease on said Tanner property?

A. No.

11 Q. Did Mr. Gumaer ever claim to you to have an option to purchase said lands of Tanner?

A. He did not.

12 Q. Did Mr. Gumaer ever offer to sell to you or your company any option for the Tanner lands or the land itself or a lease for the same?

A. He did not.

13 Q. Did Mr. Gumaer ever show you a paper purporting to be an agreement or lease or option for a lease for said Tanner lands?

A. He did not.

14 Q. Did you ask Mr. Gumaer whether he could secure a lease of the Tanner lands for the company; and, if yea, what did he say?

A. Yes; I told Mr. Gumaer that the company ought to have a lease on the Tanner property; he stated to me that we could not get a lease from Tanner under any circumstances, as the Tanner property was mortgaged, and that Tanner wanted to sell.

232 15 Q. Mr. Gumaer has testified that he had an interest in fee and in oil rights to the total of about six or seven thou-

sand acres prior to and at the time he was selected as general manager of your company. Did he ever state anything of the kind to you, or did he at the time you were arranging with him to become the general manager of your company claim to own any such oil lands or rights?

A. He did not. After I had arranged with Mr. Gumaer to send in his name to the directors in New York for the position of general manager I drove all over the oil territory with him, and also drove down on the north side of the river, beyond what I then regarded as the oil territory, to a model fruit farm which Mr. Gumaer stated he owned. He also showed me other lands in that vicinity which he claimed to own in partnership with one Quinlin, of New York. He asked what I thought of this ground as oil land. I told him that I did not think very much of it. I then described to him what I regarded the oil belt of the valley, namely, that it extended northeast and southwest from the Lobach farm towards Hardscrabble creek; that I thought the break in the formation just below Florence was the boundary line, and that if there was oil in the lower country that it would be found to be a distinct and separate deposit. I further stated to him that in the event that there was oil found in this lower country or lower basin, as I then termed it, that it would be found on the south side of the river and there was very little chance of there being oil on this property.

This is the 6 or 7 thousand acres, I presume, that he refers to. He also stated to me on our way home that afternoon that he had a lease on 160 acres of the McCandless tract, on which he
233 was paying $20 per month instead of sinking a well. He said the company could have it any time they wanted it by complying with the conditions of the lease. He did not claim to own any or have an interest in any other oil lands.

The defendants object to that portion of the witness' answer wherein the states "that this is the 6 or 7 thousand acres I presume he refers to" and moves that it be stricken out.

16 Q. Mr. Gumaer has testified that it was his duty as general manager to look after the finances, suits pending and to be brought against the company, to furnish supplies, pay the men, to collect for oil, and make settlements for same. Did that include all of his duties and powers? If nay, what other duties was he empowered to perform?

A. No; this did not include all of his duties. In addition to these duties he was to have a general supervision over the entire interests of the company in Colorado, he being their only representative there. He was empowered to receive leases and to improve and advance the company's interest in every way and was specially instructed to so do.

17 Q. Was Mr. Gumaer instructed to make contracts for leases for the company and accept leases for and on behalf of the company?

Objected to as leading.

A. He was.

18 Q. Were any particular instructions given to Mr. Gumaer in relation to making contracts for leases and taking the same for the company; if so, what instructions were given to him?

Defendants object on the ground that the witness has already detailed the duties to Mr. Gumaer.

234 A. Mr. Gumaer was specially instructed to secure an additional lease on the Lobach property, to get a lease on the Frazier property and an additional lease on the McCandless property, which Mr. McCandless had promised to give him. He was urged by me to do his very best to get a lease on the Tanner property before we finished sinking well No. 6, which was located very near the Tanner line.

19 Q. Mr. Gumaer, in his testimony, states "that he retained a certain lease, dated October 12th, 1886, belonging to your company, together with some others, because he expected some one from New York, representing your company, to turn them over to." Is that true?

A. I do — know whether it is or not. I knew of no engagement on the part of any one here representing the company that intended visiting Colorado during the year 1886 for any such purpose.

20 Q. Did you know of Mr. Gumaer having procured a lease of any land owned by one Henderson during the period mentioned through one Baker or his wife or otherwise?

A. No.

21 Q. Do you know of any lease procured by Gumaer in his own name through Mr. or Mrs. Baker during the time that he, Gumaer, or Baker were in the employ of your company?

A. I do not, nor do I know of the existence of any such lease now.

22 Q. Do you know Mr. Samuel H. Baker, formerly of Canon City, Colorado; if yea, where and when did you first meet him?

A. I do know him. I first met him at Canon City. He was a member of the firm of Waldo & Baker, our attorneys at that time. I met him the latter part of June, 1886.

23 Q. Did you have any conversation with Mr. Baker in June or July, 1886, in regard to the selection of the general manager
235 for your company?

A. I did not.

24 Q. Did Mr. Baker suggest the name of Mr. Gumaer?

A. He did not.

25 Q. Did Mr. Baker say to you that Mr. Gumaer owned and managed a large number of oil interests consisting of valuable leases and lands, or that he held any other rights which obliged him to protect his own interests and sink several wells within a stipulated time, and that for that reason it would interfere with his, Gumaer's, acting as general manager of the Colorado Oil Company?

A. He did not.

26 Q. Did you at that time request or suggest to Mr. Baker that he should assume personal charge of the business management of

the company while Mr. Gumaer could look after the financial interests, and did you tell him you would guarantee he should receive a regular salary from the company of not less than a hundred and twenty-five dollars a month?

A. No.

27 Q. Is it true, as stated by Mr. Baker, that you found it difficult to get Mr. Gumaer to consent to act as general manager for your company?

A. No.

28 Q. Did you at or about that time tell Mr. Baker that Mr. Gumaer had explained to you about his, Gumaer's, connections with the Tanner lands, and were leases or other papers in relation to any lease or options on these lands spoken about, or were any leases or contracts in relation to the Tanner lands or any other lands shown to you, Mr. Baker having so testified?

A. No.

29 Q. Did you employ Mr. Baker to procure leases for your company?

A. No.

30 Q. Did you authorize Mr. Baker to procure for the company a lease known as the McCandless lease or the Jesse Frazier lease?

A. No.

236 31 Q. Who did procure these leases for your company?

A. Mr. Gumaer.

32 Q. Did you at any time tell Mr. Baker or state in his presence that in your judgment your company had all the land they needed and more obligations to sink wells than they could fulfill, Mr. Baker having so testified?

A. No.

Cross-examination by Mr. DUNNE:

1 X Q. Mr. Wallace, is your company governed by by-laws?

A. Yes.

2 X Q. Are they printed?

A. Yes.

3 X Q. Have you a copy of them with you?

A. No.

4 X Q. Is the general manager of your company one of the officers provided for by the by-laws of the company?

A. Yes, sir.

5 X Q. Are his duties defined by the by-laws?

A. Yes, sir.

6 X. In stating to-day, in answer to the questions of Mr. Platzek, that the general manager's duties were as you detailed them to be did you have reference to his duties as defined by the by-laws of the company?

A. Yes, sir.

7 X. Outside of the duties defined by the by-laws of the company in reference to the general manager were any other duties assigned to him to be performed?

A. I think the by-laws cover his general duties pretty fully.

8 X. If any duties were imposed upon him outside of those covered by the by-laws, how would they be communicated to him?

A. They would either be communicated to him orally by myself as president or by letter.

9 X. If the company wished to impose upon him the duty of making or taking leases or purchasing property, how would such instructions be communicated to him?

A. Under the by-laws he is instructed and given full power
237 to secure leases and personalty of any nature whatever. As to the purchase in fee simple, I hardly think any one could give these instructions except the directors of the company.

10 X. You have testified, if I mistake not, that Mr. Gumaer was specially instructed to secure an additional lease on the Lobach property; also to get a lease on the Frazier property. In what manner were these instructions conveyed to him?

A. Orally by myself.

11 X. Is it within your powers as president of that company to instruct the general manager specially in respect to the making of leases or contracts for the taking of leases for the company?

A. Yes, sir.

12 X. Are you quite sure that the special instructions in respect to the Lobach and Frazier leases were not conveyed to Mr. Gumaer in writing?

A. I instructed him while in Colorado to take these leases and stated to him that they had been promised to me partly, and asked him whether I should remain and help him secure them; he told me not to worry about it, that he would tend to it. After I returned home to New York this lease question was the subject of several letters urging promp-ness in the matter.

13 X. Do I then understand you to say that originally the instructions respecting the leases of these properties were oral?

A. Yes, sir; they were entirely oral.

14 X. You were questioned in respect to Mr. Gumaer's lease or option for a lease on the Tanner property. When did you first have any knowledge of the fact that he had such a lease?

A. Some time in January, 1887.

238 15 X. How long had he been in the employ of your company when you received this information?

A. About six months.

16 X. Did you ever see the lease?

A. No, sir.

17 X. Do you know when Mr. Gumaer received it?

A. No, sir.

18 X. Who informed you that he had such a lease?

A. Mr. Josephi, vice-president of the company.

19 X. Did you have any talk with Mr. Gumaer respecting such a lease?

A. No, sir.

20 X. Did you have any talk with Mr. Gumaer respecting the purchase of it by the company?

A. No, sir.

21 X. When did you first tell Mr. Gumaer that the company desired a lease of the Tanner lands?

A. After I had arranged to send in Mr. Gumaer's name to the directors in New York for confirmation as general manager I spoke to him about securing a lease on the Tanner land. This was in the latter part of June, 1886.

22 X. What did you then say to Mr. Gumaer in respect to these Tanner lands?

A. I told Mr. Gumaer that we ought to have a lease on the Tanner land, if it was possible to get it, before we finished sinking our well No. 6, which was to be put down near the border of the Tanner property.

23 X. What did Mr. Gumaer say in reply?

A. Mr. Gumaer said that Mr. Tanner wouldn't lease any of his lands; that it was mortgaged, and he wanted to sell.

24 X. At the time of that conversation, from what you have since learned, did Mr. Gumaer have a lease or option for a lease on that Tanner property?

A. Not that I know of.

25 X. How long did Mr. Gumaer remain in your employ altogether?

239 A. In the neighborhood of five months.

—. Was it after he left your employ that you learned the fact of his having a lease on this Tanner land?

A. Yes, sir.

27 X. Can you now state whether he obtained such lease before he entered the employ of the company or while he was in the company's employ or after he left the company's employ?

A. To the best of my knowledge, he received such lease on the 6th of October, 1886, while he was in the company's employ.

28 X. Have you any personal knowledge of the date on which this Tanner lease was received by Mr. Gumaer?

A. I have not.

(Signed) JACOB WALLACE.

Examination taken, reduced to writing in my presence, and subscribed in my presence and sworn to before me on this 29th day of May, 1888, as witness my hand and notarial seal.

[SEAL.] (Signed) CHARLES NETTLETON,
Notary Public for N. Y. County, N.Y.

ISAIAH JOSEPHI, a witness called on the part of the plaintiff herein and residing in the city of New York, in the county and State of New York, and more than one hundred miles from the city of Denver, in the State of Colorado, where this cause is to be tried, being duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and being carefully examined, deposeth and says as follows:

The defendants object to the testimony of Mr. Josephi on the ground that he has been before interrogated respecting the same matters.

240 Question first by Mr. PLATZEK:

1 Q. Do you know Mr. Samuel H. Baker, formerly of Canon City, Colorado?

A. I do.

2 Q. Where and when did you first meet him?

A. In Canon City, Colorado, December, 1886.

3 Q. Mr. Baker has testified that a lease was drawn up when you were in Canon City for the purpose of adjusting a small difference between the company and Mr. Gumaer and the lease was received by the company as a sort of compromise or settlement. Is that true?

A. It is not.

4 Q. Did you in the course of a conversation with Mr. Baker or Mr. Gumaer or when either of them were present state that the company should have made Mr. Gumaer assign the Tanner lease to the company when he assumed the duties of general manager? Mr. Baker has so testified.

A. I did not.

5 Q. Mr. Baker in his testimony states that on this occasion it was conceded by all the parties that the company never had any actual interest in the lease in question, for the reason that Mr. Gumaer had obtained it nearly six months before he became general manager. Is that true?

A. It is not.

6 Q. Mr. Baker has also stated that in order that you might be satisfied, and especially in consideration of the company's waiving any interest in the Tanner lease, Mr. Gumaer consented to make the lease to the company. Is that true?

A. It is not true.

7 Q. Mr. Baker also states that it was then expressly understood that the company acquired no further interests in the lands than upon the portions that were set apart upon which it was agreed that they could sink wells. Is that true?

A. It is not.

241 8 Q. Did you, prior to your arrival in Colorado, know that Mr. Gumaer held or claimed to hold any lease on the Tanner lands in his own name?

A. No.

9 Q. Mr. Baker in his testimony states that the lease in question was made to satisfy you and your brother, and that you expressed yourself as being perfectly satisfied with the settlement, and that you did not receive the lease under protest, and that you did not make any objection whatever to receiving the lease or to the settlement. Is that true?

A. It is not. Mr. Gumaer made a lease at that time of certain land to the company, which I accepted then under protest, at the

same time demanded of him the lease which he claimed to have received from Stephen J. Tanner in October, 1886.

Cross-examination by Mr. DUNNE:

1 X Q. As a matter of fact and of your own knowledge, do you know when this Tanner lease was received by Mr. Gumaer?

A. I only know it through Mr. Gumaer's statement to me in December, 1886, that he received the same in October, 1886.

2 X —. That is all the knowledge that you have as to the date on which Mr. Gumaer received that lease?

A. No, sir.

3 X Q. What other personal knowledge have you?

A. I asked Mr. Gumaer for the leases in his possession belonging to the company; among others he handed me a lease purporting to have been made by A. R. Gumaer and of date either October 10th or October 12th, I don't remember which, 1886. I asked him for an explanation of that lease and he told me that he had made said lease to the company shortly after receiving a lease individually from Stephen J. Tanner of the same property.

242 Defendants move to strike out the answer as not being responsive to the question.

4 X Q. Have you now stated all of the personal knowledge that you have respecting the making and delivery of the Tanner lease to Mr. Gumaer?

A. Yes, sir.

(Signed) ISAIAH JOSEPHI.

Examination taken, reduced to writing, subscribed in my presence, and sworn to before me on this 29th day of May, A. D. 1888.

Witness my hand and notarial seal.

[SEAL.] (Signed) CHARLES NETTLETON,
Notary Public for New York County, N. Y.

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
vs.
AUGUSTUS R. GUMAER and FLORENCE OIL COMPANY.

STATE OF NEW YORK,
City and County of New York, Southern District of New York, } ss:

I hereby certify that on the 29th day of May, A. D. 1888, before me, Charles Nettleton, a notary public of the State of New York, in and for the county of New York, in said State of New York, at my office, at Nos. 115 & 117 Broadway, in the city of New York,
243 in said county and State of New York, personally appeared, pursuant to the notice hereto annexed, between the hours of 10 o'clock a. m. and 3 o'clock p. m. of said day, Jacob Wallace and Isaiah Josephi, named in said notice as witnesses, and M. W. Platzek,

Esq., appeared as counsel for plaintiff, and James Dunne, Esq., appeared as counsel for defendant, and the said Jacob Wallace and Isaiah Josephi, being each by me first duly cautioned and sworn to testify the truth, the whole truth, and being carefully examined, deposed and said as appears by the deposition of each of them hereto annexed.

And I further certify that the said depositions of the said Jacob Wallace and Isaiah Josephi *was* then and there reduced to writing by Emma J. Bunker, a clerk in my office and a disinterested person, not of counsel or attorney to either of the parties to this cause nor in any manner interested in the event of the said cause, in pursuance of a stipulation hereto annexed and signed by the said counsel for the plaintiff and defendants; that the said depositions were so reduced to writing by the said Emma J. Bunker in my presence and under my direction and in the presence of the said witnesses, and also in the presence of the said counsel for plaintiff and defendants.

And that the said depositions were, after they had been so reduced to writing, subscribed by the witnesses respectively, and that the same have been retained by me for the purpose of sealing up and directing the same to the clerk of the court in which the said cause is pending, as required by law.

And I further certify that the reason why the said depositions were taken was that the said witnesses reside at the city of New York, in the county and State of New York, and more than one hundred miles from the city of Denver, in the State of Colo-
244 rado, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further certify that the fee for taking said deposition is twenty dollars, is just and reasonable.

In testimony whereof I have hereunto set my hand and official seal, at the city of New York, in the county and State of New York, on this 29th day of May, A. D. 1888.

[SEAL.] (Signed) CHARLES NETTLETON,
Notary Public of the State of New York
for the County of New York.

(Endorsed:) 2161. Circuit court U. S. The Colorado Oil Company *vs.* A. R. Gumaer *et al.* Deposition of Jacob Wallace & Isaiah Josephi, for complainant. Opened, published, & filed Jun- 16, 1888. William A. Willard, clerk.

245 And afterwards and on the same day, to wit, the 16th day of June, A. D. 1888, there was opened, published, and filed in said court and in said cause the depositions of Stephen J. Tanner, George O. Baldwin, and Agustus R. Gumaer on behalf of defendants; and the said depositions are in words and figures as follows, to wit:

Depositions of Tanner et al., Behalf Defendants.

UNITED STATES OF AMERICA,
District of Colorado, State of Colorado, County of Fremont, } ss:

Be it remembered that on this 30th day of April, A. D. 1888, I, Charles E. Waldo, a notary public in and for the said county of Fremont and residing thereat, did call and cause to be and personally appear before me, at the places and times hereinafter specified, to wit, at the residence of Stephen J. Tanner, at Florence, in the county of Fremont, in the State of Colorado, in the district aforesaid, at half past two o'clock p. m. of said day, where and when Stephen J. Tanner testified, and at my office, in the town of Canon City, in said county of Fremont and State and district of Colorado, at nine o'clock on May 1st, A. D. 1888, where and when George O. Baldwin testified and Agustus R. Gumaer's testimony was begun, the witnesses above named, to wit, Stephen J. Tanner, George O. Baldwin, and Agustus R. Gumaer, — to testify and the truth to say on the part and behalf of the defendants in a certain suit now depending and undetermined in the circuit court of the United States for the district of Colorado aforesaid, at Denver, in the said district, wherein The Colorado Oil Company is plaintiff and Agustus R. Gumaer and The Florence Oil Company are defendants.

246 By consent of both parties—by John G. Taylor, Esq., for plaintiff, and Augustus Macon, Esq., for defendants—the taking of the testimony of Stephen J. Tanner was adjourned from my office, in Canon City, to the residence of said Stephen J. Tanner, at Florence, in said county and State.

And the said witnesses having been by me first severally duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy aforesaid, and being examined by counsel, as well on the part of the said plaintiff as on the part of said defendants, did severally depose, testify, and say as follows, to wit:

The said STEPHEN J. TANNER, being sworn and examined as aforesaid, did depose and say as follows in answer to the following interrogatories on the part of said defendants, to wit:

Interrogated by AUGUSTUS MACON, Esq., counsel for defendants:

Q. 1. What is your name, age, residence, and occupation?

A. My name is S. J. Tanner; age, 51 years; residence, Florence, Fremont county, Colorado; occupation, farmer.

Q. 2. Are you acquainted with the parties to this suit; if so, how long have you known them respectively?

Ans: Yes; I know them. I have known Mr. Gumaer about six years. I have known the Colorado Oil Company about two years, I think, and have known of the Florence Oil Company about a year.

Q. 3. Examine the paper which I now hand you and state, if you know, what paper that is.

Ans. This is an option sale executed by me to Mr. Gumaer in 1885. It was executed on the 10th day of December, 1885.

Q. 4. Are the lands therein described or any part thereof lands which were afterward leased by you to the defendant Gumaer?

Ans. Yes; about 360 acres were leased of said lands.

Q. 5. When was the lease above mentioned executed?

247 Ans. October 6th, 1886.

Q. 6. State if you made said lease to the defendant Gumaer directly and without any reference to the position that he then held, if any, in The Colorado Oil Company, the plaintiff herein.

Ans. I made the lease to Mr. A. R. Gumaer directly, without any reference to the Colorado Oil Company, believing that he was able to execute the terms of the lease which required him to enter upon the land and commence operations within ten days.

(The paper identified by the witness as above was introduced in evidence and marked "Exhibit 1.")

Cross-examined by Mr. J. G. TAYLOR, counsel for plaintiff:

Q. 7. Under the instrument exhibited here, dated 10th day of December, 1885, state if Mr. Gumaer elected, under this instrument, to commence sinking one or more wells for oil.

Ans. Yes, sir; he did.

Q. 8. Describe what work, in the way of sinking for oil, he did under the instrument of 1885.

Ans. He staked the grounds for one derrick some time after that, some months after, and he staked the grounds and laid some of the mudsills for another derrick.

Q. 9. That is all he did in the way of preparing to sink for oil under the option sale, is it?

Ans. He had some material on ground for the derrick, but how much I do not know. That is all I know of.

(Signed) S. J. TANNER.

The further taking of depositions herein was then adjourned till to-morrow, Tuesday, May 1st, 1888, at 9 o'clock a. m., at the office of Charles E. Waldo, in Canon City, Fremont county, Colorado.

248 On Tuesday, May 1st, 1888, at 9 o'clock a. m., at the office of Charles E. Waldo, in Canon City, Fremont county, Colorado, the taking of testimony was resumed, the plaintiff being represented by John G. Taylor, Esq., its attorney, and the defendants being represented by Augustus Macon, Esq., their attorney, and—

The said GEORGE O. BALDWIN, being sworn and examined as aforesaid, did depose and say as follows in answer to the following interrogatories on the part of said defendants:

Q. 1. What is your name, age, residence, and occupation?

Ans. My name is G. O. Baldwin; age, 51 years; residence, Canon

City, Fremont county, Colorado; occupation, ranching and real-estate business.

Q. 2. Do you know the parties to this suit, plaintiff and defendants?

Ans. I know Mr. Gumaer; have known him several years. I know the companies by reputation only.

Q. 3. How long have you resided in Fremont county?

Ans. Nine years last November.

Q. 4. State when, if you know, it became known, and how, that the lands in and about the town of Florence, in Fremont county, contained petroleum oil.

Ans. I think that it was either the latter part of the year 1882 or the spring of 1883 that I was one of a committee of three for selecting a site to bore a well, and we commenced and continued until we found oil, in the spring of 1883.

Q. 5. State how generally it became known throughout the community that oil was found as mentioned by you in your last preceding answer.

Ans. Everybody knew it at the time we found oil—that is, I supposed they did, at least.

Q. 6. State, if you know, whether that country mentioned
249 by you as having found oil in has been prospected for oil since that time; and, if so, when did such work begin and what is the result of the same.

Ans. It has been prospected from that day until the present continuously, I think. The result has been a success in finding oil.

Q. 7. Can you state what company or companies have prospected that country for oil? If so, please state.

Ans. The Land Investment Coal and Oil Mining Company, Arkansas Valley Company, the Colorado Oil Company, and the Florence Oil Company. That is all the companies that I know have prospected.

Q. 8. State, if you know, whether these companies mentioned by you succeeded in finding oil in paying quantities in or about the town of Florence.

Ans. It is so reported, and the public generally understood that it did.

Q. 9. State, if you know, when any of the companies above mentioned first erected works for refining the oil found in that vicinity.

Ans. I believe the Arkansas Valley Company, if I am rightly informed, were the first to erect refining works. I do not know when it was; I think it was in 1884; perhaps in 1885. I think it was as early as 1884, but I do not have the dates accurately.

Q. 10. State if this company has continued since the date mentioned by you the work of refining oil.

Ans. They have continued, as far as I know, from the time they commenced.

Q. 11. State what position, if any, you held in the Land Investment and Coal and Oil Mining Company.

Ans. I believe that I held the office of treasurer of that company for two or three years after its organization.

Q. 12. State if Mr. Gumaer was the owner of any of the
250 stock or interests of said company. If so, when did he acquire such interest?

Ans. Question withdrawn.

Q. 12. State, if you know, the location of the south half of section 15 and the north half of the northeast quarter of section 22 and the southwest quarter of the northeast quarter of section 22, township 19 south, of range 69 west, in Fremont county, Colorado, known as Stephen J. Tanner's farm.

Ans. If that is the description of Mr. Tanner's farm I do not know about the numbers. I know the farm; I know Mr. Tanner's farm. I once got a lease on a small portion of it in the old company.

Q. 13. State about when it was you obtained such lease and give the name of the old company spoken of in your last answer.

Ans. I think it was in the year 1883. The name of the company was the Land Investment and Coal and Oil Mining Company.

Q. 14. State, if you know, how far this Tanner tract of land is from the well mentioned by you where oil was first found by your company, as before stated.

Ans. I think it must be a mile and a half or two miles to the east.

Cross-examined by Mr. JOHN G. TAYLOR, for plaintiff:

Q. 15. Where is that lease the old company obtained from Tanner?

Ans. I believe it was in the secretary's hands.

Q. 16. Do you know what the old company did under this lease from Tanner on the ground? If so, state fully.

Ans. Nothing.

Q. 17. Who succeeded or purchased out the Land Investment and Coal and Oil Mining Company?

Ans. I believe it was sold under mortgage. If I am rightly informed, the president, D. G. Peabody, bought it in himself.

Q. 18. State, if you know, what company afterwards acquired and operated the properties owned by this old company.

251 Ans. It was reported that Mr. Peabody organized a new company under the name of the Colorado Oil Company.

Re-examined by Mr. MACON, for defendants:

Q. 19. Examine the paper which I now hand to you and state if that is a copy of the lease mentioned by you which you obtained from Stephen J. Tanner.

Ans. I should judge that it was. As near as I can recollect, it is an exact copy of it.

The paper is introduced in evidence and marked Exhibit 19.

(Signed) GEO. O. BALDWIN.

The said AGUSTUS R. GUMAER, being sworn and examined as aforesaid, did depose and say as follows in answer to the following interrogatories on the part of said defendants:

Interrogated by Mr. AUGUSTUS MACON, for defendants:

Q. 1. What is your name, age, residence, and occupation?

Ans. My name is A. R. Gumaer; residence, Canon City, Fremont county, Colorado; general manager of the Florence Oil and Refining Company; age, 35 years.

Q. 2. Do you know the parties to this action and are you a party thereto, and how long have you known them respectively?

Ans. I know them. I am one of the defendants. I have known both of the companies that are parties since their organization.

Q. 3. Examine Exhibit 1 filed herein and state if you are the party named therein as Agustus R. Gumaer. And, if so, do you know when that paper was executed and by whom?

Ans. Yes; I am that party. The paper was executed on December 10th, 1885, by Stephen J. Tanner in my presence.

252 Q. 4. State what, if anything, you did under that agreement in the way of preparing to sink or sinking any well or wells for oil on said tract of land mentioned in Exhibit 1.

Ans. I had it surveyed, and purchased the outfit for a derrick complete, with the exception of a few boards, an- laid all the sills and had all the tumbers framed. This was on a portion of this ground covered by this option.

Q. 5. State why you did not pursue this work above mentioned any further at that time.

Ans. I found that we had not provided in the option what should be done with the oil in case I sunk wells, and also that just at that time we could not get immediate sale for the oil, and this matter was talked over with Mr. Tanner and he agreed to give me further lease covering certain points—that is to say, what should be done with the oil, who should own it after the option had expired; and this we were to agree upon as soon as I got ready to make further development.

Plaintiff's counsel objects to all that part of the answer which refers to the conversation and agreement with Mr. Tanner and moves that the same be stricken out.

Q. 6. State whether or not Mr. Tanner, after the conversation mentioned by you in your last preceding answer, executed to you any lease in pursuance of that agreement; and, if so, what was the date of the same.

Plaintiff's counsel objects to this question because the lease is the best evidence of the agreement and date.

Ans. He executed one on the 6th day of October, 1886.

Q. 7. Is the lease of the lands mentioned by you in your last preceding answer the subject of controversy in this action?

Ans. Yes, sir.

253 Q. 8. Will you state when the agreement was made between yourself and Stephen J. Tanner, mentioned in your answer to interrogatory 5 of your examination-in-chief?

Objected to by plaintiff's counsel.

Ans. In March, 1886.

Q. 9. Examine Exhibit 1 and state, if you know, when that portion, commencing "Know all men by these presents," attached to the original agreement, which purports to be an extension of the option in the original contract was made and executed.

Ans. October 6th, 1886.

Q. 10. Who executed it?

Ans. Stephen J. Tanner.

Q. 11. State when you became acquainted with the fact that the country in and about what is known as the Tanner tract of land in this controversy contained petroleum oil.

Ans. In 1883.

Q. 12. State how you learned that the country in and about what is known as the Tanner tract of land contained oil.

Ans. By the development work made by the Land Investment and Coal and Oil Mining Company and also by the Arkansas Valley Oil and Land Company and Lyman Robinson and Company, and taking the general lay of the country through that valley it was conceded by about everybody that that whole valley, taking in the town of Florence and an area of land five to fifteen or twenty miles square, was oil territory.

Q. 13. State whether or not you were interested in oil lands in that vicinity or any oil company prospecting in the vicinity above mentioned by you. If so, what interest did you have and when did you acquire it?

Ans. I had an interest in the Land Investment and Coal and Oil Mining Company. It was a fourteenth interest of all the
254 stock that had been agreed upon to be issued. I acquired it about the middle of March, 1883. I was interested in oil lands and leases in 1883 and 1884 and 1885; in fact, have been up to the present time.

Q. 14. State the object and purposes of the organization of the Land Investment and Coal and Oil Mining Company, if you know.

Plaintiff's counsel objects that its charter is supposed to set that forth and is the best evidence.

Ans. To deal in oil and coal lands and to do and to carry on a general oil business.

Q. 15. State if the company last mentioned by you sunk any wells for oil in the vicinity of the lands included and described in Exhibit 1, marked in this examination; and, if so, how far from this land.

Ans. They sunk a well about a mile and a half from this land.

Q. 16. Was oil found in the well mentioned by you in the answer to the last preceding question and when was this well sunk?

Ans. Yes; there was oil found; the well was sunk in the fore part of 1883.

Q. 17. You have stated that you were interested in leased lands in the vicinity of what is known as the Tanner lands, mentioned in this examination. Will you state when you became interested in the same and how?

Ans. In 1883, I think, I obtained a lease from James A. McCandless, some time in November; also another just below the McCandless lease; a total of 240 acres; the McCandless lease, the 160 acres, adjoined the lands covered by this option of Tanner's given to me.

Q. 18. Is the lease mentioned by you in your last preceding answer, the McCandless lease, now in force, and has it been at all times since the same was made?

255 Ans. I do not think it is at present, because lately the payments have not been kept up on it. I think the payments stopped about the middle of last year, 1887. The lease continued and was in full force up to about that time.

Adjourned to half past 1 p. m., at which time taking of testimony was resumed.

Q. 19. State if you had any other interest in lands adjacent to the lands described in Exhibit 1 herein prior to and at the time of your employment as the general manager of the plaintiff company; and, if so, state what the same were.

Ans. I had an interest in fee and in oil rights to the total of about six or seven thousand acres. That was at that time.

Q. 20. State what directions or instructions, if any, were given you by the plaintiff company prior to and at the time of your employment as its general manager as to procuring a lease of any of the lands known herein as the Tanner lands; and, if any such instructions were given, were the same given by writing or orally.

Ans. There were no instructions given about the Tanner lands, orally or in writing either.

Q. 21. State whether or not, prior to and at the time of your employment by the plaintiff company as its general manager for Colorado, you exhibited to Jacob Wallace, its then president, and explained to him the contract filed herein and marked Exhibit 1.

Ans. I did; yes, sir.

Q. 22. State whether or not you had any correspondence with the plaintiff company through its president, Jacob Wallace, during your employment by said company respecting the lands mentioned in Exhibit 1 and known as the Tanner lands. If so, produce that correspondence as a part of your evidence.

256 Ans. I did, and this is part of it.

(Witness produces letter marked Exhibit 2.) This exhibit is a letter from Gumaer to "J. Wallace, p't," dated October 21st, 1886.

Plaintiff's counsel denies having any other letter of that date from defendant Gumaer. Thereupon defendant, testifying, produces press copy of another letter of same date, addressed to "J. Wallace, Esq.," which is not introduced.

Q. 23. State whether or not you wrote and mailed, with postage prepaid, the original, of which this paper is a copy, to J. Wallace, president of the Colorado Oil Company, directed to said Wallace, 304 Greenwich St., New York; and, if so, when did you do so.

Ans. I did; on August 21st, 1886.

The copy which is addressed to "J. Wallace, Esq.," is offered in evidence and marked Exhibit 3. Another letter from Wallace to Gumaer of date August 28th, 1886, is introduced and marked Exhibit 4.

Another letter from Gumaer to "J. Wallace, Esq., president," dated 10, 3, 1886, is introduced and marked "Exhibit 5." Other letters from Gumaer to Wallace of dates "10, 7th," "10, 27," "11, 22," "12, 1st" (all in 1886), are introduced and marked Exhibits 6, 7, 8, & 9. Another of date "11, 29, 1886," is introduced and marked Exhibit 10.

Three telegrams and a copy of a telegram (the latter admitted by agreement of parties) are introduced and marked Exhibits 11, 12, 13, and 14; also another telegram introduced and marked Exhibit 15.

Q. 24. State if you had any power of attorney from the plaintiff company executed to you during your employment as its
257 general manager. If so, produce it and let it be filed as part of your answer.

Ans. Yes, sir.

(Witness produces paper, which is introduced in evidence and marked Exhibit 16.)

Q. 25. Did you have any other power of attorney executed by said company during your employment by said company or at any other time than the one filed as part of your answer to the last preceding question—(Exhibit 16)?

Ans. I did not.

Q. 26. In procuring the lease of the Tanner lands of October 6th, 1886, which is the subject of controversy in this action, did you procure the same for your own individual interests; and, if so, who paid the expense of procuring the same?

Ans. I did, and paid for it out of my personal money.

Q. 27. State if you sunk well No. 8 for the plaintiff company. If so, what was the agreement between you and the company respecting the same?

Ans. I sunk No. 8 for the plaintiff company and the agreement was per the one drawn on and dated October 12th, 1886. Under the agreement of October 12th, 1886, that well was sunk. The lease was the one filed in former depositions herein, marked either Exhibit "B" or "C." The date will show which one it is.

Q. 28. Who wrote that lease, if you know?

Ans. Charles A. Morrison, on October 12th, 1886.

Q. 29. How was the contract as to sinking well No. 8 made between you and the plaintiff company?

Ans. It was made and reached by a correspondence by letters and telegrams, which are filed in this case as Exhibits 2 to 15 & 18.

Q. 30. State if the lease mentioned by you as being drawn on October 12th, 1886, to the plaintiff company was afterwards modified; and, if so, when.

Ans. Yes, sir; on December 20th, 1886.

258 Q. 31. Who, if any one, requested the modification of that lease?

Ans. Mr. Josephi, then the vice-president of the Colorado Oil Company; Mr. Isaiah Josephi.

Q. 32. When so modified, as above mentioned, did Mr. Isaiah Josephi express any dissatisfaction whatever respecting the same? If so, state what he said.

Ans. It was about the 20th of December, 1886, he said that he had been informed by Mr. D. G. Peabody that when I went to Tanner to secure this lease of October 6th, 1886, from Mr. Tanner, that I represented to Mr. Tanner that I was getting a lease for the Colorado Oil Company and not for myself, and that he, Peabody, said that the lease really should go to the company. I stated that Mr. Peabody had falsely stated the matter, and then Mr. Josephi said that the matter was too small to bring into controversy, and that he did not have any confidence in Mr. Peabody anyhow, and so far as their company was concerned he was willing to compromise the whole matter, admitting it to be either as Peabody said or as I said, if I would make a new additional lease to the Colorado Oil Company and give them enough additional land with each of the wells No. 8 and No. 9 as already located and the derricks up; also No. 10, which was to be located. We agreed upon the latter basis and I gave them, I think, about four acres to each well No. 9 and No. 10, and as to No. 8 I did not give them any land, as they already had all the land that No. 8 was located on by lease of Oct. 12. Then we went to Mr. Waldo's office and the agreement was drawn up and executed by myself and Mr. Josephi as vice-president of the Colorado Oil Company. The lease then executed by me is one of the exhibits formerly filed in this case and marked Exhibit "B" and "C."

259 Q. 33. State whether or not Mr. Isaiah Josephi at the time of the execution of the lease of December 20th, 1886, mentioned in your last preceding answer, expressed himself as satisfied or dissatisfied with that settlement of the questions respecting the Tanner lease. If so, state what he said either one way or the other.

Ans. He expressed himself as being entirely satisfied with the manner in which we had fixed it up.

Plaintiff's counsel objects to question and answer because Mr. Josephi's authority to act for the company in the matter is not shown.

Q. 34. Did you receive any written expression from Mr. Isaiah Josephi of the approval of the company as well as himself of your conduct of its business as general manager after the execution of

the lease of December 20th, 1886? And, if so, please produce the same and file it as part of your answer to this question.

Ans. I did.

Witness produces paper marked Exhibit 17, which is offered in evidence.

Plaintiff's counsel objects to the admission of the paper because it is not shown that Mr. Josephi had any authority to act for the company in this matter, and the exhibit is in direct variance with the wishes of the company. The removal of Mr. Gumaer by the company was a direct expression of disapproval of his action.

Another letter from Wallace to Gumaer, dated October 12th, 1886, was introduced in evidence and is marked Exhibit 18.

Q. 35. State whether or not the plaintiff company has ever tendered to you a release of the property leased by you to them of the dates of October 12th and December 20th, 1886, or rendered any account to you of the oil received by them from the said leased premises.

Ans. They have not released nor tendered any release of the
260 property. I think they have rendered a statement of two or three lots of oil produced from No. 8 well.

Q. 36. In speaking of the statement rendered by the Colorado Oil Company for two or three lots of oil, explain just what you mean by that.

Ans. I think they have rendered a memorandum statement, but have not offered to pay for it.

Q. 37. Were you able, at the time of the execution of the lease of October 6th, 1886, of lands by Tanner to you, to defray the expenses of sinking the wells, as required by that lease?

Objected to by plaintiff's counsel because what he did is the question, not what his ability was.

Ans. I was.

Q. 38. Did you make any representations to Mr. Tanner, prior to or at the time of the execution of the lease mentioned in the last preceding question, to the effect that if such lease was made the plaintiff company would carry out and execute the terms and conditions which were imposed upon you therein?

Ans. I did not.

Q. 39. What were your duties as general manager of the plaintiff company?

Ans. To look after the finance part of the business; to look after the suits that were then pending and that were to be brought; to see that the proper supplies were furnished for carrying on the business; to pay the men and collect for the oil sold and make the settlements therein.

Q. 40. In pursuance of that duty did you keep the books of account of the plaintiff company during your employment by it?

Ans. I either kept them or had them kept under my supervision.

Q. 41. Did you keep an account of the expenditures incurred in

sinking well No. 8, together with all other expenses expended
261 during your management of the company, and do the books of the company show that?

Ans. I did, and the books of the company show it.

Q. 42. State if you, during your employment as general manager for the plaintiff company, were intrusted by the company with its leases of lands in Fremont county, Colorado.

Ans. I was.

Q. 43. State why you retained in your possession, if you did so, the lease which you executed to plaintiff dated October 12th, 1886.

Ans. I retained that lease, together with three others, on account and expecting some one to be here from New York that represented the company, and to turn them over all together. I also had all the other leases belonging to the company that they had obtained prior to my management.

Q. 44. What, if anything, have you or The Florence Oil Company, your codefendant herein, done in the way of sinking wells and producing oil upon the lands in the vicinity of the lands mentioned in Exhibit 1 herein since October, 1886?

Ans. We have sunk five wells on these lands known as the Tanner lands, and found oil in paying quantities. We have also sunk in the immediate vicinity, I think, six others, and have found oil in paying quantities.

Adjourned till to-morrow morning, May 2nd, 1888, at 9 a. m.

WEDNESDAY, *May 2nd*, 1888—9 o'clock a. m.

Parties present, by their attorneys, as heretofore.

Examination of AGUSTUS R. GUMAER continued:

Q. 45. In your letter marked Exhibit 2 in this examination you used the following words: "I must get in shape to handle the 440 acres that I have option on." State what lands you referred to in the words above quoted.

262 Ans. I referred to the lands covered by the option given to me by Mr. Tanner, dated December 10th, 1885, these being the lands that I went over with him while he was here, and that I had shown in my option while he was here, and I had promised to give him the first refusal of these lands whenever I got ready or in shape to make a proposition to any one. This being the understanding when he was here, I think this letter opened the first correspondence in regard to the lands now in question.

Q. 46. In the same letter you used the following words: "The party absolutely refuses to take less than $34,000, the amount named in my option. No. 6 well we commence Monday putting up derrick and is located where we talked, just at the edge of the lands that I hold option on." Now state what conversation you had in respect to the lands included in your option, you had with Jacob Wallace that you refer to by the words quoted from your letter.

Ans. I referred to the option that was given to me by Mr. Tanner, and as we had talked the matter all over when he was here and by

my using the word party I knew that he would know that I meant the option obtained from Tanner, as the matter had been fully discussed and talked over when he was here, and the location of the wells No. 6 was made or agreed upon by him while here that it should be made just on the edge of the Tanner land that I held option on and on the east edge of the McCandless lease, and it was understood between us that in the event and at some future time that I would make a proposition to the company for some portion of the Tanner lease or option, and in that event a well was to be sunk in pumping distance from No. 6, the latter being the well that was located when he was here on the east edge of the
263 McCandless lease and joining the Tanner tract.

Q. 47. In Exhibit 3 of this examination, which is a copy of the letter written by you to J. Wallace dated August 21st, 1886, you say, "I think it would be a good scheme to get some party to put up the cash to cover the option I hold on the 440 acres. I think $34,000 is ab't the best price it can be bought for;" and on page 2 of the same letter you use these words, "You remember I have one hundred and sixty acre lease below the Tanner tract. That makes, with the option and lease, six hundred acres;" and on page 3 of the same exhibit you use these words, "I am confident I can handle it with Denver parties, but, as promised, I will give you first chance." Now, state if the lands mentioned, which you had an option on, and the Tanner lands, mentioned in another place in this same exhibit, were the same lands, and also explain what you mean by the words "as promised, I will give you first chance."

Ans. These are the same lands which I had the option, about 440 acres, and the lease adjoining, the 160 acres, being the lease that I had obtained from James A. McCandless in 1883, which was then in full force, are the same lands that we went over when he was here in about July 1, 1886, and being the same lands that I had agreed to give him the first chance on—that is to say, whenever I got in shape to make him a proposition to either lease a portion of or sell a portion or the whole I was to give him the first refusal of said lands. He said he would either be in shape after awhile to accept a proposition that I might make, either with the Colorado Oil Company or some other parties that he might induce to go in with him.

264 Q. 48. You also use, on page 3 of this same exhibit, the following words: "As I stated when you were here, the farm, 440 acres, is worth at least $15,000 without oil." Please state what you refer to by the words above quoted.

Ans. I mean by that that when he was here we had talked the matter over as to what this farm was worth for farming purposes and I stated to him at that time that the farm was worth $15,000 for farming purposes, leaving out oil interests.

Q. 49. Did you receive any reply to your letters of August 21st and marked as Exhibits 2 & 3 herein? If so, state when it was and what it was that you received.

Ans. Yes; I received the letter marked Exhibit 4 herein about the first of September, 1886.

Q. 50. State if you, prior to or any time during your employment for the plaintiff company, had any other option from Stephen J. Tanner or of any lands which you called Tanner lands other than as set forth in Exhibit 1 herein.

Ans. That was all.

Q. 51. State what other correspondence, if any, you had in respect to leasing to the plaintiff company any lands which you had leases upon prior to your employment by said company.

Ans. Some of these exhibits here, one being Exhibit 5; it is a letter to J. Wallace, Esq., making a proposition on lands previously leased by me and a portion of the same lands that he, Wallace, talked about when he was here.

Q. 52. What was the next communication which took place between you and the plaintiff company? And state, if any, what it was.

Ans. It was Exhibit 11 herein, a telegram from myself to
265 J. Wallace, president, bearing date on October 7th, 1886. It was to ignore my proposition that I had previously made October 3d, as shown by Exhibit 5 herein.

Q. 53. State what was the next communication you had with the plaintiff company as to making any lease to them for any land in Fremont county held by you, if any; state what the same was.

Ans. A letter shown as Exhibit 6 herein, bearing date October 7th, 1886. The land referred to in the letter was a portion of the land covered by the lands in question and lands known as the Tanner lands and a portion of the lands known as the McCandless lease, the latter being in section 23, 19 south, of range 69 west, all in Fremont county.

Q. 54. Are the lands referred to in Exhibit 6 as the Tanner tract of land the same lands contained in your option, Exhibit 1?

Ans. A portion of them are and a portion is not. The proposition in Exhibit 6 is to drill one well in pumping distance from No. 6, which was then located on the east side of the McCandless lease, to the Colorado Oil Company, and the others on east side of the Tanner tract, meaning the land that is included in the Tanner option to me. I would give the production of the three wells and forty acres of the McCandless lease in section 23, being on the east side of the tract called the Tanner tract, at one-eighth royalty, and the third well or derrick, as mentioned in this letter, to be completed by May 1st, 1887.

Plaintiff's counsel objects to these explanations with reference to these exhibits and moves to strike out every one of them. The witness is only repeating what is fully shown by the exhibits themselves.

266 Q. 55. You use the following words in Exhibit 6: "Please wire me on receipt of this." State if you received the dispatch as requested; and, if so, state what it is.

Ans. I received the telegram shown as Exhibit 13 herein and dated October 11th, stating that he could not consent to lease as referred to in my letter of the 7th at more than one-tenth royalty.

Plaintiff's counsel objects to the answer of the witness. He does not state what the contents of the exhibit *is*, and the exhibit itself, which is already in evidence, speaks for itself.

Q. 56. Now, please state the exact language of Exhibit 13.

Plaintiff's counsel objects. The exhibit speaks for itself. The plaintiff's counsel also moves to tax the costs of this part of the examination to the defendants on the ground that the same is frivolous.

Ans. Dated New York, October 11th. A. R. Gumaer, G. M., Canon City, Colorado. Without consulting trustees cannot consent to lease at more than tenth royalty. J. Wallace, pres't.

Q. 57. What reply, if any, did you make, and how, to Exhibit 13?

Ans. My reply was as shown in Exhibit 12, a telegram bearing date October 12th, 1886; I accepted the proposition contained in Exhibit 13, being at a one-tenth royalty.

Q. 58. State what you did in pursuance of the agreement reached between you and the plaintiff company through the several letters and telegrams before mentioned by you in the way of executing the same.

Ans. I immediately had a lease drawn up and executed from myself to the Colorado Oil Company, as shown by Exhibit "B" or "C," bearing date October 12th, 1886. I immediately com-
267 menced work as general manager, and in behalf of the Colorado Oil Company, to fulfill the requirements as agreed upon by Mr. Wallace, president, by the commencement of work in the erecting of a derrick and the sinking of well No. 8, which was to be located in pumping distance from No. 6 and on the west side of the Tanner tract, we having the most of the material on hand, with the exception of an engine, to complete the sinking of that well, in accordance with the lease drawn on October the 12th also, as agreed and shown in letter, Exhibit 6, the one well being in pumping distance of No. 6.

Q. 59. Did you advise the company from time to time as to your work on well No. 8? And, if so, did you receive any dispatch or dispatches from the company or its president in relation to the same? If so, produce the same and file them as part of your answer to this question.

Ans. I did. A part shown in telegrams November 2nd and 3d.

The two telegrams are produced and marked Exhibits 20 and 21 and introduced in evidence herein.

Q. 60. State whether or not the plaintiff company made any objection to your performing the conditions on their part to be performed as contained in your lease to it of date October 12th, 1886.

Ans. Plaintiff's counsel objects that it is not shown that the plaintiff knew that any such lease had been executed when this witness was assuming to act under it.

Ans. They did not.

Q. 61. Mr. Gumaer, you were present, were you, and heard Aaron C. Henderson testify in this cause?

Ans. Yes.

Q. 62. Do you remember his testimony respecting a lease which he said he made to Mrs. Baker and which was said to have been transferred to you? If so, please state the facts and circum-
268 stances connected with the same.

Ans. I do. The circumstances was about like this: Mr. Baker asked me if I would purchase any leases from him that he might obtain on various lands. I stated in answer that depended upon the price that he might ask and the location of such oil leases. He then wanted to know if I would pay him by the day. I stated I would not. He then stated that he was going to try and get some leases on his own account and he would try to find purchasers for them. He wanted to know if I would be likely to buy them. I told him that it would depend upon their location and what he would ask for them. All right, he said, when he got time he expected to get the leases anyway and he would take the chances of selling them. Some time afterwards, I do not know just how long, he obtained a lease from Henderson and offered it to me, and which, after some time had passed in discussing the amount which he should get for it, I agreed upon a price with him for this lease. The lease was in his wife's name. The price so agreed upon was paid to either himself or wife with my personal money.

Defendants' counsel here says the word "individual money" is a more apt and proper expression than "personal money" to indicate his own property or money and requests the witness to use the word "individual" instead of "personal."

Plaintiff's counsel objects to defendants' counsel telling the witness what words to use in testifying.

Q. 63. Do you mean by the use of the word "personal money" in your last preceding answer to say that the money was your individual property and not the property of the plaintiff
269 company or any one else but yourself?

Ans. Yes, sir; wherever I used the words personal money I mean my individual money.

Q. 64. Were you present at the examination of Jesse Frazer in this cause and did you hear his testimony in respect to your requesting him to execute a lease to the plaintiff company? State whether or not such testimony is true.

Ans. I recollect his testifying, and a portion of it was true and a portion of it was not true.

Q. 65. State what portions of the testimony of Jesse Frazer were incorrect as to procuring a lease for the plaintiff company from him.

Ans. Well, I think he stated that I first saw him in behalf of the Colorado Oil Company in securing a certain lease which was executed on or about September 23d, 1886. This was not true, as the first time I saw him I went to his house, accompanied by Mr. Baker, for the purpose of executing a lease from himself to the Colorado

Oil Company according to the terms that had been agreed upon between himself and Mr. Baker. I do not know that that was all, but that was a portion in that respect.

Q. 66. Did you state at the time of the execution of the lease by Jesse Frazer to the Colorado Oil Company or at any other time that you had procured a lease from Mr. Tanner to the plaintiff company?

Ans. No, sir; I did not. Mr. Tanner's name was not used.

Adjourned till half past one o'clock p. m. of this day.

WEDNESDAY AFTERNOON—half past one o'clock.

Examination of A. R. GUMAER continued:

Q. 67. You have stated in this examination that you did some work in preparing to sink oil wells under the option marked
270 Exhibit 1 herein. Now state when such work was done.

Ans. In March, 1886.

Q. 68. State what, if anything, the defendant The Florences Oil Company has done in and about erecting works for refining and refining the oil produced from the wells which you have mentioned in this examination as having been sunk by yourself and that company.

Ans. They erected and built a refinery in the early part of 1887 and commenced refining oil in the month of June, the same year, the capacity of the refinery being about 180 barrels a day, and a few months later the capacity of said refinery was doubled.

Plaintiff's counsel objects to both question and answer as wholly immaterial to the issues in this case.

Q. 69. Please state if you have any other correspondence, other than Exhibits 20 and 21 of this examination, of the plaintiff company respecting your work in sinking well No. 8 and complying with the conditions of the lease of October 12th, 1886, made by you to them. If so, produce the same and file it as part of your answer.

Ans. Yes, sir. I have some letters here bearing dates as follows: November the 2nd, 1886; November the 12th, 1886; November the 23d, 1886; December the 14th, 1886, and December 11th, 1886, all dated at New York, addressed A. R. Gumaer, general manager, and signed J. Wallace, president.

The letters are introduced in evidence and marked Exhibits 22, 23, 24, 25, and 26.

Cross-examination by Mr. TAYLOR, for plaintiff:

Q. 70. Have you read the testimony of Stephen J. Tanner, heretofore taken by the defense in this cause?

Ans. I have not read it; I heard it read.

271 Q. 71. When was the Florence Oil and Refining Company organized, and when did you become its general manager?

Ans. It was, I think, the early part of 1887. I became its general manager immediately—that is, as soon as they commenced business.

Q. 72. What oil lands or oil leases did that company have to operate on at the time of its organization?

Ans. Well, I cannot give a description of them all, as about everything was in my name, either individual or a trustee, was really their lands and leases.

Q. 73. Did it derive all of its lands and leases then through you?

Ans. It did not.

Q. 74. What did it derive through you and what did it derive through other parties?

Ans. About all was derived through other parties.

Q. 75. Describe, Mr. Gumaer, or refuse to, what leases and lands that company commenced operations on.

Ans. They was very few or a very small amount of land or oil interest that was obtained through me, and the description I cannot give without going through company's papers.

Q. 76. Can you tell the names or designate any of the lands that the company commenced operations on? Please do so if you can.

Ans. The Florence Oil Company commenced operations on the lands known as the Tanner lands.

Q. 77. Were there any other lands besides the Tanner lands that the company then had a right to operate on?

Ans. I do not recollect whether there was or not at that time.

272 Q. 78. Has that company acquired rights or interests in any other lands?

Ans. The Florence Oil and Refining Company have acquired rights in other lands.

Q. 79. What other lands?

Ans. As shown by the records of Fremont county.

Q. 80. Do you know where these other lands lie that you speak of and the extent of it?

Ans. I think about everything is in the eastern part of the county. I could not state what the extent of the land is.

Q. 81. State about the amount to the best of your knowledge.

Ans. Well, I am unable to state about the number of acres that they do hold and control.

Q. 82. Have you any knowledge on that subject at all?

Ans. I can state a number of pieces that they have purchased.

Q. 83. Kindly do so, sir.

Ans. The Florence Oil and Refining Company have purchased—well, I could not give the description—I think it is 480 acres or thereabouts from Mr. McCandless, about 160 acres from Mr. White, about 160 acres from Atteberry, 160 acres from Mrs. Canfield, 160 from Patterson, and I don't recall others now, but I think there is a number of others.

Q. 84. Is the interest in these lands in the nature of a leasehold or fee-simple title?

Ans. Fee simple to all purchased.

Q. 85. What interest has this company in the Tanner lands in controversy?

Ans. The Florence Oil and Refining Company own the lease and have an option for purchase.

Q. 86. From whom did it derive such a right?

Ans. From the Florence Oil Company.

273 Q. 87. From whom did the Florence Oil Company derive its title?

Ans. From me.

Q. 88. How and when did you convey to the company?

Ans. I do not recollect just when it was. The conveyance that was made to the Florence Oil and Refining Company, I think, was put on record. It was held by me in trust, and a couple of months ago a compromise was supposed to be complete, which was being consummated through Mr. Isaac E. Blake, who was then acting in behalf of the parties interested in this suit, and he had sent me notice that the papers drawn up as a compromise of this matter now in question was all satisfactory to his people, and after this an assignment was made of the lease from me which I was holding in trust to the Florence Oil and Refining Company.

Plaintiff's counsel desires the records to show that he notifies the witness to give direct answers to questions.

Q. 89. How and when did you convey to the company—the Florence Oil Company?

Ans. I cannot answer it any better than I have. I do not think there was any paper in writing that showed the conveyance of that particular lease.

Q. 90. Do you mean to say that as trustee for the Florence Oil Company you conveyed the Tanner leasehold to the Florence Oil and Refining Company?

Ans. Yes, sir; I think that was it.

Q. 91. How and when did you become trustee for the Florence Oil Company in this particular?

Ans. Well, I think it was about the beginning of the year 1887. I already had it. It was an understanding I had with other parties.

Q. 92. What other parties?

Ans. I refuse to give their names.

274 Q. 93. Were the parties connected or interested in the Florence Oil Company?

Ans. Yes, sir.

Q. 94. Was the arrangement reduced to writing or verbal only?

Ans. Verbal, I think.

Q. 95. Was there any consideration for such an arrangement?

Ans. I presume there was.

Q. 96. What do you mean by "I presume"? Do you know or do you not know?

Ans. I know there was.

Q. 97. What was the consideration?

Defendants' counsel advises the witness that the question is not in any way pertinent to the issues in this case and advises him not to answer it.

Ans. Being advised by my attorney, I refuse to answer.

Q. 98. Do you mean to say by holding this leasehold in trust for

the Florence Oil Company that your interest therein had been purchased and the Florence Oil Company was the owner of the leasehold and you simply holding it for them as trustee?

Counsel for defendant advises witness that as no claim of right to the property in controversy is made by the Florence Oil Company or the Florence Oil and Refining Company as innocent purchasers from defendant Gumaer, but that the whole defense to this action is based upon the rights of defendant Gumaer alone, the question is wholly immaterial and he is at liberty to answer or decline to answer as he sees fit.

Ans. Being advised by my counsel, I object to answer. I refuse to answer the question.

Plaintiff's counsel asks for a commitment of this witness for contempt until these questions are answered. He applies to the notary taking this testimony for the proper process for contempt.

275 Question 98 repeated. Do you mean to say by "holding this leasehold in trust for the Florence Oil Company" that your interest therein had been purchased and the Florence Oil Company was the owner of the leasehold?

Ans. Yes, sir.

Q. 99. How was this conveyance made by you, as trustee, to the Florence Oil and Refining Company?

Ans. It was made by deed or bill of sale or both.

Q. 100. To whom did you deliver such instrument or instruments of conveyance?

Ans. I think they were delivered either to Mr. Danforth or to Mr. Johnson, who represented Mr. Danforth.

Q. 101. Are either of such conveyances in your possession now?

Ans. No, sir.

Q. 102. When was the Florence Oil Company organized?

Ans. It was never organized legally as a corporation, but was a name used by an association of individuals some time in the fore part of 1887.

Q. 103. Who were the individuals constituting the Florence Oil Company?

Defendants' counsel advises the witness that the question can have no possible bearing in determining the issues in this case, and hence he is advised that he may answer or decline to answer, as he sees fit.

Ans. Being advised by counsel, I refuse to answer.

Q. 104. Were you one of the individuals of the Florence Oil Company?

Defendants' counsel repeats the advice given after question 103, above.

Ans. I was.

Q. 105. Do you still decline to give the other members of the organization?

276 Defendants' counsel repeat his advice not to answer, as given above after question 103.

Ans. I do.

Q. 106. Is that organization still in existence?

Ans. That is a pretty hard thing to answer. I should say it was not to the best of my knowledge.

Q. 107. When and how did it expire?

Ans. I do not know that it has expired, but I think all of its rights were transferred to the Florence Oil and Refining Company. I do not recollect the date, but I think the records show.

Q. 108. About when?

Ans. I think about the middle of last year. At least a portion of them was then, and some since.

Q. 109. Do you mean to say that the records of this county will disclose any such transactions?

Ans. I think so. I think they were made by me as trustee.

Q. 110. What were the objects and purposes of the Florence Oil Company?

Ans. I think to carry on a sort of a general oil business.

Q. 111. What business relation, if any, did it bear to the Florence Oil and Refining Company?

Ans. I do not think it bore any.

Q. 112. Do you mean to say it did not bear any such relation?

Ans. I do not think it did.

Q. 113. Will you say you know it did not?

Ans. As far as my knowledge is it did not.

Q. 114. Who had the management of the affairs of the Florence Oil Company?

Ans. I acted as general manager.

Q. 115. Did it engage in any active operations in the oil business?

Ans. It did.

277 Q. 116. Describe its operations.

Ans. Well, it purchased supplies and sunk an oil well or oil wells, I do not know which. Yes; I guess it sunk oil wells. It sold oil, and—well, done a sort of a general oil business.

Q. 117. Where and how many wells did it sink?

Ans. I think it sunk a couple, and perhaps more, on the Tanner tract.

Q. 118. The Florence Oil and Refining Company was in existence during this time, was it not?

Ans. I do not think it was.

Q. 119. When were these wells sunk by the Florence Oil Company?

Ans. Some time during the fore part of 1887.

Q. 120. That is the way you have fixed the date of the creation of the Florence Oil and Refining Company, and you now say it was not in existence when the Florence Oil Company sunk these wells in the fore part of 1887. Will you please state again if the Flor-

ence Oil and Refining Company was organized before or after the Florence Oil Company sunk these wells you have spoken about?

Ans. The Florence Oil and Refining Company was organized after the Florence Oil Company commenced business. There was some wells sunk by the Florence Oil Company prior to the Florence Oil and Refining Company's doing any business. I know that the Florence Oil Company had sunk some wells before the Florence Oil and Refining Company was organized. I know that.

Q. 121. Did these two companies enjoy joint privileges in sinking wells on this Tanner land?

Ans. No, sir; they did not.

Q. 122. Did the Florence Oil Company's privileges cease when the Florence Oil and Refining Company was organized?

Ans. I think they did so far as this land was concerned.

278 Q. 123. Do you still say that these two companies bore no business relations to each other?

Ans. No, sir; I do not think they did.

Q. 124. What was the extent of your interests in the Florence Oil Company when it was in operation?

Ans. At one time I think it was one-tenth.

Q. 125. Was it, at any time, any greater than that? State the greatest interest you ever held in it.

Ans. I think it was two-thirds.

Q. 126. Is it not a fact that you yourself constituted what you call the Florence Oil Company?

Ans. No, sir.

Q. 127. What was the extent of your interest in the Florence Oil and Refining Company when it was organized?

Ans. I think somewhere in the neighborhood of a twentieth.

Q. 128. Were your interests in the company ever any larger than that?

Ans. I do not recollect now whether it was or was not. I think it was.

Q. 129. What is your interest in it now?

Ans. I have one share of stock.

Q. 130. Have you ever parted with your interest?

Counsel for the defendant- here advises witness that the last question and answer thereto could in no manner affect the issues in this cause, and hence he is advised by his counsel that he can exercise his right to answer or decline to do so.

Ans. As advised by counsel, I decline to answer.

Q. 131. One share of stock is not a twentieth interest in the company, is it?

Ans. No, sir.

279 Q. 132. Please state when and to whom you parted with that part of your interest which is the difference between the share you hold now and the interest you say you held in the company when it was organized.

Counsel for defendant- here advises witness that the last question

and answer thereto could in no manner affect the issues in this cause, and hence he is advised by his counsel that he can exercise his right to answer or decline to do so.

Ans. Being advised by counsel, I refuse to answer.

Q. 133. Do you state positively that one share of stock is all that you own, either directly or indirectly, in the Florence Oil and Refining Company at the present time?

Defendants' counsel repeats the advice given with the last two questions.

Ans. Being advised by counsel, I refuse to answer.

Q. 134. Did you have a greater interest than one share in this company at the time of the institution of this suit?

Ans. I did not. I did not have any then.

Q. 135. How long before that time had you parted with your entire interest in the company—I mean the Florence Oil and Refining Company, and the time I mean is the time of the institution of this suit?

Ans. I do not think I had any interest in it before the institution of this suit. I had not parted with the interest, because I had not had any in that company.

Q. 136. Did you at any time have under your control a greater part than one-twentieth interest in the Florence Oil and Refining Company?

Ans. I may have had or I may not have had. I should consider I did.

280 Q. 137. When and how much greater interest than a twentieth?

Ans. I do not recollect now just how much greater. It was during the time the company was organized.

Q. 138. Do you still decline to answer when and to whom you parted with these interests?

Defendants' counsel repeats his advice on the subject.

Witness answers: Being advised by counsel, I decline to answer.

Q. 139. You say that you got out timbers for a derrick for a proposed well on the Tanner land some time about March, 1886. Were they put upon the ground at that time or merely fashioned ready to be put up?

Ans. I did not get out the timbers; I purchased them. I did put them on the ground in March, 1886.

Q. 140. Were these timbers not subsequently sold to the Colorado Oil Company after you became its manager?

Ans. Yes, sir.

Q. 141. Were they not sold through the name of W. E. Johnson to the plaintiff company, or did you sell them directly to the company yourself?

Ans. They were sold by W. E. Johnson.

Q. 142. The money realized from the sale was yours, was it not?

Ans. No, sir.

Q. 143. Had you sold them to Johnson?

Ans. Yes, sir.

Q. 144. Then I understand the transaction to be that you sold the timbers to Johnson and then, as manager of the plaintiff company, bought them back from him?

Ans. Yes, sir.

Q. 145. When did you sell them to Johnson and when did you buy them back?

Ans. Well, I think it was some time before I was employed by the Colorado Oil Company that I sold them to Johnson, and I bought them for the Colorado Oil Company after I became its general manager.

I think it was about the time Johnson went to Carbondale;
281 that was in the fore part of 1886 that I sold them to Johnson.
I won't be certain it was Carbondale, but he went away somewhere, and my impression is it was about June. I think Johnson always had an interest in those timbers from the time they were purchased. I do not know just what time I bargained for them back, but I think they were billed to the company some time in October or November. I took the timbers before I had agreed upon a price with him, I think.

Q. 146. Besides the option on the Tanner lands and the McCandless lands, what interest in oil lands in this county did you hold when you went to work for the plaintiff company?

Ans. Well, I had interests in, I think, over 6,000 acres, including oil rights and patented lands.

Q. 147. About how far from the town of Florence were these lands?

Ans. I think they were run from three to six miles—that is, the lands were within an area of from three to six miles.

Q. 148. Had you ever sunk a well for oil in this county before your employment by the plaintiff company?

Ans. No, sir.

Q. 149. You say this lease from you to the plaintiff company of October 12th was written by Charles A. Morrison. Was not Morrison working in your bank at that time, and did you not dictate to him the contents of the lease?

Ans. He was working in the bank at that time, and I think I dictated the lease.

Q. 150. Were you not frequently instructed by the officers of the plaintiff company, when you were acting in its employ, to obtain leases of lands for oil purposes for the company?

Ans. I was. But the opening of discussion of obtaining such leases was commenced by me, with the exceptions of one lease that

Mr. Wallace had requested me to assist Mr. Baker in obtain-
282 ing that lease. This was because Mr. Wallace thought I would have more influence with the party in obtaining that lease than Mr. Baker would, the party being Mr. McCandless. I think Mr. Wallace spoke to Mr. McCandless about this lease while he was here.

Q. 151. Did you not write frequently to Mr. Wallace that you

were making efforts to get and soon expected to succeed in getting other oil leases?

Ans. Yes, sir.

Q. 152. You say you retained the lease of October 12th, with three others belonging to the plaintiff company, for certain reasons. What other three leases were these that you retained?

Ans. I think there was three leases. One was a lease from Mr. McCandless, one from Mr. Frazer, and a lease from the State, I think.

Q. 153. Baker aided you in obtaining the Frazer lease for the company, did he not?

Ans. No, sir; he obtained the lease himself for the company. The company paid him for it.

Q. 154. Was he in the employ of the plaintiff company at that time?

Ans. Yes.

Q. 155. Was he in the employ of the company at the time he obtained the Henderson lease?

Ans. Yes.

Q. 156. How much money did you pay him for the Henderson lease?

Ans. I think in the neighborhood of twenty-five or thirty dollars. It might have been a little more than that.

Q. 157. Plaintiff's counsel again calls upon the witness to answer the questions that remain unanswered herein.

Question 92 being repeated to the witness, he answers: On the beginning of that business Mr. Burton was one of the parties; my brother was another. I am not sure whether there was any others in the beginning of business under the name of the Florence
283 Oil Company or not.

Q. 158. Were there any others after the beginning of the business?

Ans. Yes, sir; there was. There was Mr. Danforth, and I do not know who else he represented, but I think he represented some parties. I think there was a couple other parties, but it was changed. The basis was changed several times and agreements entered into with other parties, and I am unable to state just exactly who did have interests in it.

Q. 159. What consideration was paid you for parting with your interest in the Tanner leasehold and holding it in trust for the Florence Oil Company?

Ans. I do not think that there was any cash consideration paid me for my services as holding these things as trustee nor for the Tanner lease. There was money advanced from time to time for development work, and whatever the consideration was it came in on those deals.

Adjourned till 9 o'clock to-morrow morning.

WEDNESDAY, *May* 3*d*, 1888—9 o'clock a. m.

By consent of all parties a certified copy of a lease from Stephen J. Tanner to A. R. Gumaer is introduced in evidence by defendants and marked Exhibit 27.

Cross-examination of A. R. GUMAER continued:

Q. 160. Look at this paper (paper is introduced in evidence and marked Exhibit 28) and state if this does not contain the estimates for well No. 8 and made by yourself and sent to Mr. Wallace.

Ans. Yes, sir.

(Signed) A. R. GUMAER.

Cross-examination closed.

Defendants' counsel desires that it shall appear of record
284 that this witness had offered to answer all of the questions which he at first refused to answer, and this is the case.

(Signed) CHAS. E. WALDO,
Notary Pub.

UNITED STATES OF AMERICA,
District and State of Colorado, County of Fremont, } *ss:*

I, Charles E. Waldo, a notary public, duly commissioned and sworn, in and for said county and State, and residing at Canon City, in said county and State, do hereby certify—

That, in accordance with the notice hereunto attached, I attended at my office, in the said town of Canon City, in said county of Fremont, in said State of Colorado, on Monday, the 30th day of April, A. D. 1888, at the hour of ten o'clock in the forenoon of said day, at which time and place the plaintiff was present by its general manager, Simeon A. Josephi, and by John G. Taylor, Esq., its attorney, and defendant Agustus R. Gumaer was present in person, and defendants were represented by Augustus Macon, Esq., their attorney.

That, it then appearing that Stephen J. Tanner, one of the witnesses whose testimony was desired, was sick and unable to be at the place above mentioned, by agreement of all parties the taking of testimony was adjourned to the residence of said witness, in the town of Florence, in said Fremont county, at the hour *at* half past two o'clock of said 30th day of April, A. D. 1888, at which time and place his testimony was taken.

That thereupon the further taking of testimony under said notice was adjourned as hereinbefore set forth, and that the testi-
285 mony of other witnesses was taken at my said office in the manner hereinbefore fully set forth.

That said witnesses, Stephen J. Tanner and George O. Baldwin and Agustus R. Gumaer, whose testimony was taken as hereinbefore set forth, severally reside more than one hundred miles distant from the city of Denver, in said State and district, in which last-mentioned city this cause is to be tried.

That each of said witnesses last above named, previous to the commencement of his testimony, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy between the said Colorado Oil Company, plaintiff, and Agustus R. Gumaer and The Florence Oil Company, defendants, now pending in said circuit court of the United States for the district of Colorado.

That the depositions aforesaid were by me reduced to writing; that I personally and not by another used the caligraph wherewith they were written, in the presence of the said witnesses respectively and from their statements, and, after the same were carefully read over by said witnesses respectively, said witnesses severally subscribed and made oath to said depositions in my presence and before me.

That I have retained said depositions in my possession for the purpose of sealing and directing the same, with the certificates of the reasons aforesaid for taking said depositions, with my own hand, to the court for which the same were taken.

That I am not of counsel nor attorney for either of the parties in the cause in said depositions and caption named, and that I am not in any way interested in the event of said cause.

That the bills for fees hereto attached are true and
286 correct and have been paid as therein stated.

That the exhibits hereto attached and marked Exhibits 1 to 28, inclusive, are the exhibits referred to in the testimony herewith returned.

In testimony whereof I have hereunto set my hand and notarial seal this 3d day of May, A. D. 1888.

[SEAL.] (Signed) CHAS. E. WALDO,
Notary Public.

My commission as notary public will expire December 10th, 1891.

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER and FLORENCE OIL COMPANY.

To the above-named plaintiff, Colorado Oil Company, and to Messrs. Wells, McNeal and Taylor, its solicitors:

Please take notice that the depositions *de bene esse* of Stephen J. Tanner, James A. McCandless, George O. Baldwin, Charles D. Bradley, William E. Johnson, Charles A. Morrison, and Agustus R. Gumaer, who severally reside more than one hundred miles from the city of Denver, where the court at which the above-entitled cause will be tried is to be held, will be taken in behalf of the above-

named defendants in the above-entitled cause, to be read in
287 evidence on the final hearing thereof, at the office of Charles E. Waldo and before him, a notary public, in the town of Canon City, in the county of Fremont and State of Colorado, on the 30th day of April, 1888, commencing at the hour of 10 in the morning of said day and thence continuing from day to day at the same place or at the place the officers before whom the said depositions shall be taken may appoint, until the whole of the said witnesses or so many of them as attend for that purpose be examined and their depositions completed, and you are notified to attend and cross-examine the said witnesses if you desire so to do.

Dated this 18th day of May, A. D. 1888.

Very respectfully, &c.,

(Signed) A. MACON,
Solicitors for Defendants.

Received a copy of the above notice this 19th day of May, A. D. 1888.

(Signed) WELLS, McNEAL & TAYLOR,
Plaintiff's Solicitors.

Copy. Colorado Oil Company *vs.* Agustus R. Gumaer *et al.* Notice.

In the Circuit Court of the United States for the District of Colorado, Sitting at Denver, in said District.

COLORADO OIL COMPANY, Plaintiff,
vs.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY, Defendants.

Accounts of Notary's Fees for Taking Depositions for Defendants on April 30th, May 1st, 2nd, and 3d, 1888.

288 Agustus R. Gumaer, defendant, to Charles E. Waldo, notary public, Dr.

To 84 folios direct examinations and certificates at 20 cents,	$16 80
To 117 folios copy of testimony at 10 cents	11 70
To administering oaths to three witnesses at 10 cents	30
To three days' attendance taking testimony at $3	9 00
To 64 folios copy of exhibits at 10 cents	6 40
Total	$44 20

Paid by defendant A. R. Gumaer.

(Signed) CHAS. E. WALDO, *N. P.*

United Oil Company, for plaintiff, to Charles E. Waldo, notary public,
Dr.

To 42 folios cross-examinations at 20 cents	$8 40
To 117 folios copy of testimony at 10 cents	11 70
To one day's attendance taking testimony at $3	3 00
To 64 folios copy of exhibits at 10 cents	6 40
Total	$29 50

Paid by S. A. Josephi for pl'ff.
(Signed) CHAS. E. WALDO, *N. P.*

Witness Fees.

S. J. Tanner	$1 50
Geo. O. Baldwin	1 50

Both paid by defendant A. R. Gumaer.
(Signed) CHAS. E. WALDO, *N. P.*

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY, Complainant,
vs.
AGUSTUS R. GUMAER *et al.*, Defendants.

289 To the above-named complainant, Colorado Oil Company, and to Messrs. Wells, McNeal and Taylor, the attorneys of record of the said complainant in the above-entitled cause:

You are hereby notified to produce at the taking of depositions *de bene esse* before Charles E. Waldo, a notary public in and for said county of Fremont, in the State of Colorado, and to be used in taking the same on the part of the above-named defendants, pursuant to notice heretofore given you, to commence on the 30th day of April, 1888, and to be continued from day to day until the depositions of Stephen J. Tanner, James A. McCandless, Agustus R. Gumaer, and others are taken in the above-entitled cause, the following original written papers to be used as evidence on trial of said cause on the part of the defendants which relate to matters in controversy in this cause, namely:

Two letters written by the defendant Agustus R. Gumaer, each dated on the 21st day of August, 1886, one addressed to J. Wallace, Esq., and one to J. Wallace, Esq., p't, and a letter written by said Gumaer, dated October 7th, 1886, in manner following: 10, 7, 1886, addressed to J. Wallace, p't, and a letter written by said Gumaer and addressed to J. Wallace, president, dated October 3d, 1886, in manner following: 10, 3, '6, and a telegraphic dispatch, dated October 12th, 1886, from Canon City, Colorado, addressed and directed to J. Wallace, president, 304 Greenwich street, New York, and also another telegram sent by said Gumaer from Canon City, Colorado, dated October 7th, 1886, directed to J. Wallace, president, 304 Greenwich street, New

York, and also letter written by said Gumaer to J. Wallace, p't, dated October 27th, 1886, and telegrams dated November 2d, 1886, directed to J. Wallace, p't, and also another telegram, dated Nov'r 3d, 1886, directed to J. Wallace, Esq., p't, each addressed to said Wallace, 304 Greenwich street, New York, and letter written
290 by said Gumaer, November 22d, 1886, directed to J. Wallace, p't, and another dated November 29th, 1886, written by said Gumaer, directed to J. Wallace, Esq., p't, and a telegram dated November 30th, 1886, sent by said Gumaer, addressed to J. Wallace, Esq., p't, and a letter written by said Gumaer, dated December 1st, 1886, directed and addressed to J. Wallace, Esq., p't.

And you are further notified that said original writings hereinbefore demanded will be used in the examination of said Gumaer which will be taken on the 30th day of April, 1888, and you are to produce the same on said 30th day of April, 1888, at said examination.

And you are hereby notified if you fail to do so secondary evidence of the contents of said original writings will be given.

(Signed) A. MACON,
Solicitor for Defendants.

Rec. a copy of the above this April 19, 1888.
(Signed) WELLS, McNEAL & TAYLOR,
Pl'ff's Sol'rs.

EXHIBIT 1.

This agreement, made this 10th day of December A. D. 1885 by and between Stephen J. Tanner and Agustus R. Gumaer, both of the county of Fremont, in the State of Colorado, witnesseth that said Tanner, for and in consideration of the sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged and confessed, hereby agrees that he will convey to said Agustus R. Gumaer by good and sufficient warranty deed with all usual covenants, the following-described real estate, to wit: The south half of section fifteen (15) and the north half of the northeast quarter of
291 section twenty-two (22), and the southwest quarter of the northeast quarter of section twenty-two (22), all in township nineteen (19) south of range sixty-nine (69) west of the sixth (6th) principal meridian in the county of Fremont in the State of Colorado, being four hundred and forty (440) acres of land, more or less, if said Agustus R. Gumaer shall, at any time not more than four months after the date of this agreement, pay to said Stephen J. Tanner, or deposit in the Exchange Bank of Canon City to the credit of said Stephen J. Tanner, the sum of twenty-four thousand dollars ($24,000) as payment therefor, subject to the further conditions hereinafter set forth.

But if said Agustus R. Gumaer at any time not more than four months after the date hereof shall elect to go upon said premises or any part thereof, and shall, within the time aforesaid, begin the work of preparation for sinking one or more wells for oil upon said

premises, then from the date of such commencement of work the contract above set forth shall cease and determine, and instead thereof, for the consideration above mentioned and in further consideration of such beginning of work, said Stephen J. Tanner hereby agrees and covenants that if said Agustus R. Gumaer on or before the 10th day of December A. D. 1886 shall pay to said Tanner, or shall deposit to the credit of said Tanner in said Exchange Bank of Canon City, the sum of thirty-four thousand ($34,000) dollars, as payment therefor—he, said Stephen J. Tanner, will convey to said Agustus R. Gumaer the land above and hereinbefore described, by warranty deed with all usual covenants of title.

It is mutually understood by and between the parties hereto that if said Gumaer shall, as aforesaid, commence the work of
292 sinking a well or wells, and shall not thereafter choose to purchase said land on the terms specified, he may, within any reasonable time (as soon as practicable) after said December 10th A. D. 1886, remove from said land all fixtures and improvements which he, said Gumaer, shall have put thereon, including casing of wells as well as all other things that can be removed.

And it is further agreed that all covenants herein shall bind, and shall be enforceable in favor of, the heirs, executors, administrators and assigns of the parties hereto the same as they affect the parties themselves.

In witness whereof said Stephen J. Tanner has hereunto set his hand and seal the day and year first above written.

(Signed) STEPHEN J. TANNER. [SEAL.]

STATE OF COLORADO, } ss:
County of Fremont, }

I, Charles E. Waldo, a notary public in and for said county, in the State aforesaid, do hereby certify that Stephen J. Tanner, who is personally known to me to be the person whose name is signed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said agreement as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal this 10th day of December, A. D. 1885.

[SEAL.] (Signed) CHAS. E. WALDO,
Notary Public.

Know all men that I, A. R. Gumaer, of the county of Fre-
293 mont and State of Colorado, the party of the second part in the within contract described, made by Stephen J. Tanner to me on the 10th day of December, A. D. 1885, do hereby assign, transfer, and set over the said contract unto the Florence Oil and Refining Company, with all the property, rights of property, interests, power, and possessions of every kind therein conveyed to me; to have and to hold to it, my assignee as aforesaid, and to its legal successors in said property and rights, and to it all my rights I do hereby assign forever.

In witness whereof I have hereunto set my hand and seal this 1st day of April, in the year 1887.

Signed, sealed, and delivered by—

(Signed) A. R. GUMAER.

STATE OF COLORADO, *County of Fremont,* } ss:

I, C. A. Morrison, do hereby certify that on the 1st day of April, 1887, before me, a notary public in and for said county, personally came A. R. Gumaer, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed and delivered the same as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of April, A. D. 1887.

(Signed) C. A. MORRISON,
[SEAL.] *Notary Public.*

294 (Indorsed:) No. 13732. Agreement. Stephen J. Tanner and Agustus R. Gumaer.

STATE OF COLORADO, *County of Fremont,* } ss:

I hereby certify that this instrument was filed for record at 1 o'clock p. m. Dec. 11, 1885, in my office and duly recorded in Book 27, page- No. 545 & 546.

(Signed) JNO. WILSON, *Recorder.*
A. C. DICKINSON, *Deputy.*

Know all men by these presents that for and in consideration of the sum of one dollar to me in hand this day paid by A. R. Gumaer, the receipt whereof is hereby acknowledged and confessed, I, Stephen J. Tanner, do hereby extend the time in the foregoing instrument of writing mentioned for the payment of $34,000 therein mentioned to be paid by the said A. R. Gumaer to and until the first day of May, 1887, and do agree that the said instrument shall be in full force and of binding effect until said May first, 1887.

Provided always that I hereby reserve to myself all crops which may be growing upon the lands herein mentioned at said May 1st, 1887, with the right to gather and market the same.

Witness my hand this 6th day of October, A. D. 1886.

(Signed) STEPHEN J. TANNER. [SEAL.]

STATE OF COLORADO, *Fremont County,* } ss:

295 I, Samuel H. Baker, a notary public in and for said county, in the State aforesaid, do hereby certify that Stephen J. Tanner, who is personally known to me to be the person whose name is subscribed to the foregoing agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered

the said agreement as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of October, A. D. 1886.

[SEAL.] (Signed) SAMUEL H. BAKER,
Notary Public.

Know all men that I, A. R. Gumaer, of the county of Fremont and State of Colorado, the party of the second part in the within contract described, made by Stephen J. Tanner to me on the 6th day of October, 1886, do hereby assign, transfer, and set over the said contract unto the Florence Oil and Refining Company, with all the property, rights of property, interests, power, and possessions of every kind therein conveyed to me; to have and to hold to it, my assignee as aforesaid, and to its successors and assigns in said property and rights, and to it all my rights I do hereby assign forever.

In witness whereof I have hereunto set my hand and seal this 1st day of April, in the year 1887.

Signed, sealed, and delivered by—

(Signed) A. R. GUMAER.

STATE OF COLORADO, } ss:
County of Fremont, }

I, C. A. Morrison, do hereby certify that on the 1st day of April, 1887, before me, a notary public in and for said county, personally came A. R. Gumaer, to me known to be the same person de-
296 scribed in and who executed the foregoing instrument, and acknowledged that he executed and delivered the same as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of April, A. D. 1887.

[SEAL.] (Signed) C. A. MORRISON,
Notary Public.

Colorado Oil Co. *vs.* Gumaer *et al.* Exhibit 1. Filed Apr. 30, 188-. (Signed) Chas. E. Waldo, N. P.

(Indorsed:) No. 14849. Agreement. Stephen J. Tanner to A. R. Gumaer. Oct. 6, 1886.

STATE OF COLORADO, } ss:
County of Fremont, }

I hereby certify that this instrument was filed for record in my office, at 9.35 o'clock a. m., Oct. 7th, 1886, and is duly recorded in Book 28, pages 365, 366, and 367.

(Signed) JAMES H. PEABODY, *Recorder,*
By ROB'T D. HALL, *Deputy.*

Fees, $2.30.

No. 15374. Agreement, Stephen J. Tanner to A. R. Gumaer, and assignment.

STATE OF COLORADO, } ss:
County of Fremont, }

I hereby certify that this instrument was filed for record in my office, at 8.50 o'clock a. m., April 2d, 1887, and is duly recorded in Book 28, page 594 and pages following.

(Signed) J. H. PEABODY, *Recorder.*

Fees, $3.75.

297 EXHIBIT 2. May 1st, 1888. (Signed) Chas. E. Waldo, Notary Public.

EXHIBIT 2. May 1, '88.

Exchange Bank of Canon City, Colo.

Mulock Bros. & Co.

CANON CITY, COLO., *Aug. 21st*, 1886.

J. Wallace, Esq., p't.

D'R SIR: I just wired you that I was going to Denver to-morrow, also that we were down 520 feet.

We have had very sticky drilling for the past 3 d's.

When I left the well this morning the last screw was fine drilling & we hope it may continue. I think we are going to get a good well.

The sands & gass stratas are different from other wells.

We struck more gass last night. The first is shut off.

If we get a good well out of No. 5 I must get in shape to handle the 440 acres that I have option on. The party absolutely refuses to take less than 34,000, the am't named in my option. No. 6 well we commence Monday putting up derrick & is located where we talked; just at the edge of the lands that I hold option on. There is room for one well between No. 5 & 6, also between No. 4 & 5.

The Arkansas Valley Co. have all their wells on twelve acres ground & possibly it would not cover more than ten acres. They are putting down the 6th one.

Yours truly,

(Signed) A. R. GUMAER,
Gen. M'n'g'r.

298 EXHIBIT 3.

Ex. 3. May 1, '88.

Personal.

8, 21, '6.

J. Wallace, Esq.

D'R S'R: I think it would be a good scheme to get some party to put up the cash to cover the option I hold on the 440 acres.

I think 34,000 is ab't the best price it can be bought for—say some party or parties put up the am't as a loan or an advancement

as may be agreed upon, & when the am't of purchase-money is p'd back, together with, say, 6% interest, then the property to be owned jointly; would say in a deal of this kind I would want one-half interest after said money was p'd. In the event you furnish the party you can arrange between you for other half. The facts are that there are no lands to be had for one mile & a half east of the McCandless lease (or well No. 6); also there is none to be had south of lease; on the west there is ab't 80 acres belonging to McCandless (will try & make lease for the company on this tract). This is really all the land unless you go west to Frazier's or Loback's. I believe there is good land north, but none to be had for a mile or two. You remember I have one hundred & sixty acres lease below the Tanner tract that makes with the option (& lease) 600 acres. This takes in all the described territory (that is easy to work) east of well No. 6. I consider this the best opportunity for a speculative deal that I have seen since in Colo., or, in fact, ever before. As I stated when you was here, the farm, 440 acres, is worth at least 15,000, without oil, and I am just fool enough to think the oil is worth one million more.

My option don't expire before middle of December, but I
299 want to call your attention to the fact that the time is passing by, and after we see the result of No. five something must be done. I am confident that I can handle it with Denver parties, but, as promise-, I will give you first chance. If preferred, I can put in some other lands, leases, & rights and organize a new company. This would be well enough to consider, and if parties in y'r company would become interested with us, together with others, I believe it would be a good scheme. However, all these are left with you & for y'r judgment to decide. In case No. 5 proves good, you had better look up this matter and advise me if you have any proposition to offer. If we owned the land it would do away with royalties. No. 3 & 4 will pay McCandless probably $150 month. The Arkansas Valley have 5 wells down & one drilling, & they all only cover ab't 10 acres.

Yours truly,
(Signed) A. R. GUMAER.

P. S.—You owe Chas. Lefever that suit clothes, $30.00.
(Signed) G.

EXHIBIT 4.

Ex. 4. May 1, '88.

J. Wallace, pres't; Isaiah Josephi, vice-pres't; C. H. Gardner, sec'y & tre-s.; A. R. Gumaer, gen'l manager, Colorado.

Office of Colorado Oil Co., 304 Greenwich street.

NEW YORK, *Aug. 28th*, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: Your letters 21st and T. D. 26th rec'd and noted. Glad to know that you have made settlement with Carleton and

300 that all is satisfactory.. When I received your latter of 17th, with sample of sand from 185 ft. depth, I felt a little suspicious as to the formation, owing to the fact that the oil-bearing sand had taken an upward dip. Now, as you have struck coal at such a depth as 850 ft., I hardly know how to account for it. At any rate, if you have not got oil in paying quantity, should shove her down deeper. Am real anxious to know character of the oil found in coal and the depth of strata of coal; hope to have a long letter from you with your ideas on this subject; trust you will be able to deliver the August production of oil promptly on Sep. 1st. Referring to your letter of 19th in regard to buying outfit at Robinson well, I hardly know how to advise. I think myself it is a good purchase, and would instruct you to make it for the Co., but in the present state of things cannot say exactly what to do; at the same time if you will let us know if we can get the outfit delivered and pay for it when we need it—say about 90 days hence, or between this and that time—would advise you to go ahead. Again, referring to yours of the 18th, would state that I am unable at the moment to find Waldo & Br. letter regarding the $100 paid, but will find it & send it Monday, if possible, and would again say in regard to employing additional counsel, "Don't fail to make our case as strong as possible," and I think influential and able counsel give great weight. I sent yesterday the answer and cross-complaint, as requested, to Mess. W. & B., which I hope will be all O. K. The affidavit, &c., were all sworn to before U. S. Commissioner De Kay, Osborne being absent in Europe. Did not write W. & B., as have been too busy.

Yours very truly,

(Signed) J. WALLACE, *Pres't.*

301 EXHIBIT 5.

EXHIBIT 5. May 1, '88.

Exchange Bank of Canon City, Colo.

Mulock Bros. & Co.

CANON CITY, COLO., 10, 3, 1886.

J. Wallace, Esq., president.

D'R S'R: I have located well No. 7 on Frazier lease; all lumber on the ground. In order to hold this lease we are not obliged to sink but the one well, and that one we are not oblige- to push work rapidly.

The lower country, you know, is my choice, and really no leases can be had in the valley, as my option covers all, which you know.

I will make this proposition to the company: If you will sink one well immediately, one within y'r, & 3 more within the 2nd & 3rd y'rs, I will give you right to put the five wells on the 160-acre lease that belongs to me at one-eight royalty & in such places as

you may select from time to time. However, this lease will not prohibit me from leasing or sinking other wells on said lease. I think we can get lease from McCandless for ab't 25 acres more by drilling two wells at ⅛ royalty. Of course we can handle this in addition to my proposition. This will include about all McCandless' lands except his orchard & the land way off on the hillside. The latter he has leased, 40 acres, at ⅛; says party going to drill well soon.

Mr. McCandless has not promised me positive that he would give such a lease, yet I think he may.

In regard to Mr. Loback's lands, he will not lease even one hundred acres unless we agree to put down one well immediately & four others within 3 y'rs. I haven't written you, but No. one
302 hasen't produced over one-half bbl. per day, & Lefever says it never did while under Peabody's mngmt. for Colo. Oil Co. I have known this for over month, but overlooked writing you. I was deceived in the well on acc't of its pumping water; this is the only well that pumps water. In my opinion, we could not afford to sink more than one well for liberal lease to every one hundred acres. All the drillers say go east for good wells. You know we talked this when you was here.

The 160 acres owned by the company I consider better territory than the Loback farm.

If the company should buy the Robinson outfit we could sink well about as cheap on this land as we could on the Loback track, and I believe it is worth trying after awhile.

Kindly write me y'r views in regard to sinking on my lease, as I want to commence another derrick, No. 8, immediately.

Yours truly,

(Signed) A. R. GUMAER, *Gen. M'g'r.*

You had better wire me whether you accept my proposition or not, so that I may act accordingly.

303 EXHIBIT 6.

Ex. 6. May 1, '88.

Ex. 3. Nov. 30, '87.

Exchange Bank of Canon City, Colo.

Mulock Bros. & Co.

CANON CITY, COLO., 10, 7*th*, 1886.

J. Wallace, Esq., p't.

D'R S'R: I wired you to ignore my proposition of the 3rd, & *that* see new one which I make, viz: If you will drill two wells on Tanner tract adjoining McCandless lease, say one in pumping distance fr. No. 6 & the other east side of said tract, and commence derrick for 3rd rig, I will give you forty acres of the McCandless lease, all at ⅛ royalty—that is to say, the 3 wells (production) and the 40 acres

all to be ⅛ royalty. You are not required to do any work on the 40-acre tract; both leases are good for 20 y'rs, or as long as oil is found in paying quantities. I think I can sink two wells besides No. 6 (now sinking) within 90 d's, & possible 70 d's, unless we have some serious accident. Everything is working nicely now. You understand these are lands that I have had option on before I acted for the company. I consider this very valuable territory and I can't get you as favorable lease, considering location, from any one. McCandless says positively that he will not lease balance of his Florence lands to any one, either at ⅛ or ⅛ royalty (or on any terms at present). Colo. Coal & Iron Co. refuse to lease their lands on any terms, & these are about the only lands in near vicinity what we think is best oil lands & convenient to work (near water, &c.). By the by, McCandless has ab't 75 acres (runs across the river); I wrote you 30 or 40 acres.

His lands off on the mesa he has leased; he leased 40 &
304 afterwards leased 320 acres—(same parties). There isen't any water within several miles of this tract. He says party is obliged to commence work within ab't 20 d's, and if he does not commence we can have the lease; however, this would not interfere with the above work referred to.

I think I could drill four wells ab't as soon as I could drill one on those lands (including building of derrick & drilling).

Please wire me on rec'pt of this whether to go on with work under the above proposed lease. The work must be pushed, as I want to get some oil from No. 7 & possibly No. 8 in present contract. I will get ready so that work can be pushed rapidly on hearing from you. Don't fail to wire.

Yours truly,

(Signed) A. R. GUMAER, *Gen. M'g'r.*

EXHIBIT 7.

Ex. 7. May 1, '88.

Exchange Bank of Canon City, Colo.

Mulock Bros. & Co.

CANON CITY, COLO., 10, 27, 1886.

J. Wallace, Esq., p't.

DEAR SIR: In reply to y'r favor of the 22nd inst., I beg to say the small cable would not do for drilling. We used it a short time for that purpose, and then used it for cleaning out wells and light work generally. The large cable we have drilled the two wells with, and as the end becomes worn are obliged to cut off from 50 to 100 ft. from time to time. Thus we *we* stopped drilling. Our cable was ab't 1,340 feet long.

305 I- regard to the engin- at No. one, we are already using that; took it from No. one when we commenced No. 6. We can do nothing with No. 8 until we get engine. You note I

say No. 8 (No. 7 we have not completed the derrick as yet). You know we are obliged to have engine at every well.

In regard to the Robinson outfit, as yet I haven't made a purchase. He insists on $3,000. This is the lowest he has ever offered it. When I wrote you first I thought we could buy it for $2,500, sure. There is 1,300 ft. 6-in. drive-pipe in the Robinson well. It was used as casing. I think we can pull this yet. I would not buy the outfit until we are positive we can pull the string of pipe. The boiler at No. 4 will only pump Nos. 3, 4, & 5 (as they are located); boiler at No. 6 will pump No. 6 & 8.

To make a long story short, enclosed herewith I hand you memorando for wells No. 7, 8, 9, & 10. It is important you ship the first order called for on memorando immediately and the second order nearly as quick. I have provided for tankage as follows: Two cisterns that will hold ab't 1,500 bbls. at an expense of $1,000.

I have looked the tankage business up quite thoroughly, and concluded the cisterns *was* the cheapest and would answer all purposes. The Arkansas Valley are building and using them, and when built right have proven a success.

I note what you say about parties visiting Canon. Shall be pleased to see them and do all in my power to help the scheme. In regard to the refining business, I think it important you organize new company for that purpose; also the right to deal in lands, sink wells, & do everything that is necessary in carrying on a general oil business.

In regard to Peabody's claim against Colo. Oil Co., I am
306 positive he will not recover one thousand dollars, and I believe our chances are good to recover several thousand dollars from him over and above what he claims against Colo. Oil Co. I have taken additional counsel on this matter and am more positive that we are right in what I have just stated than ever before. I have got ten good men that are willing to go on this trial and testify that D. G. Peabody's reputation is bad & would not believe him under oath. You can depend that these witnesses will be on hand and testify as above stated.

When we clean up we are in shape to do business, and the first of March we will do it.

I realize the position of matters & how they should be: of course, if anything in the meantime presents itself I will take advantage of it even if the consideration was more than I should consider parties intitle- to.

In regard to letter dated 22nd, I did not have occasion to use the letter; however, it is an important letter to use in the future; a very good name for new company would be Colo. Oil and Refining Co.; however, most any name will do.

Our gas well is immence. I will furnish enough fuel for all our pumping wells, say Nos. 3, 4, 5, 6, & 8, a saving of coal at least $150 per month; also a saving in labor at $50 per mo.

I think there is no doubt but that we have enough gas to do this; of course we estimate it; we are pumping No. 6 with gas fuel, and in few days will use it for No. 3, 4, & 5.

Will forward monthly statement to-morrow with vouchers. Oil del. Sept. (or Oct. 1st), 14,000 gallons; will have about 20,000 1st Nov.; estimated it close yesterday. Please excuse delay in my reply to these letters; delay caused by some special matters
307 that require my personal attention for past few days; at present everything is O. K.

Yours truly,

(Signed) A. R. GUMAER,
Gen. M'n'g'r.

Enclosed I hand you freight bill, 516.94. I think you should get drawback.

(Indorsed:) Filed Oct. 7th, 1887. (Signed) G. E. Dudly, clerk. Exhibit D.

EXHIBIT 8.

Ex. 8. May 1, '88.

Exchange Bank of Canon City, Colo.

Mulock Bros. & Co.

CANON CITY, COLO., 11, 22, 1886.

J. Wallace, Esq., p't.

D'R SIR: In regard to contracting our product, I think advisable for you to confer with me before closing any contract, as something of importance may transpire.

I hear (& get it direct, but confidential) that the Arkansas Valley people say they are going to take our product right along; however, I am confident they expect us to sell at a low price. They are very anxious to control the refinery business, and sometimes I think the Standard own some of their stock, yet there may not be anything in the latter.

The Arkansas people expect to put in two more stills at once and are talking — put- up wax-works.
308 The stills have been ordered & they expect to push the work complete.

They certainly have no use for the extra stills at present or for some time to come without our product. Even if we should contract our oil for one year we need a company for the refining business as well as the drilling of wells, with the right to carry on a general oil business.

If our No. 9 proves a good well this will open up a considerable territory and the oil business will naturally result in a very large business.

In regard to the wells that we are bound to put down is No. 7 on Frazier lease & No. 8; we are now drilling also No. 9, & No. 10 we complete rig (derrick), but not obliged to sink for long time.

Thus we are not obliged to drill but No. 7 & 9. You know what we are to do to hold State leases; however, nothing immediate. I

have been unable to get anything from Mr. Loback that would justify us taking lease, as the number of wells from year to year that he asks us to complete is unreasonable. He feels that I have worked against him (he does not say this), but actions speaks sometimes.

I think it would be a good idea for you to write him regarding lease and ask him what would be his most liberal proposition on 240 acres; say to him that his territory has proven very unproffitable thus far and in order to get new wells drilled he must make a liberal proposition or you can do nothing for him. You may say anything els- you wish. I will add that you can say his territory has proven very difficult to drill in.

I will send you mem. estimate for refinery last of week.

Note what you say about machinery and other supply for wells; also later note y'r telegram. I am figuring on a large deal
309 (down in lower country) and if I can get it in presentable shape I will advise you and would like to have you & y'r friends to go in with me and organize new company. If I can get it around soon it could be handled by the refinery company.

Yours truly,

(Signed) A. R. GUMAER,
Gen. M'n'g'r.

Can't do any drilling before cable arrives.

EXHIBIT 9.

Ex. 9. May 1, '88.

J. Wallace, president; A. R. Gumaer, gen. man'g'r for Colorado.

Colorado Oil Company.

CANON CITY, 12, 1*st*, 1886.

J. Wallace, Esq., p't.

DEAR SIR: Your favor bearing date 27th inst. duly rec'd, and I note all you say. In reply I shall be pleased to see Mr. S. Josephi and take pleasure in showing him our interests.

I wired you last eve. about our new strike.

Drillers seem to have a great deal of confidence in it, and estimate it fr. 15 to 20 bbls. I think the show is about 10 bbls. I am satisfied it is a good one.

Yours truly,

(Signed) A. R. GUMAER.
G. M.

310 EXHIBIT 10.

Ex. 10. May 1, '88.

J. Wallace, president; A. R. Gumaer, gen. man'g'r for Colorado.

Colorado Oil Company.

CANON CITY, 11, 29, 1886.

J. Wallace, Esq., p't.

DEAR SIR: I forward you this day my statement for October, showing balance due me, $4,946.89.

My acc'ts for Nov. and Dec. (particularly for Dec.) will be much smaller than they were for Sept. & Oct.

I haven't anything special to say at this writing other than everything is moving satisfactory.

The drilling of No. 8 was slow for about four days after we started in with the new cable, but is, I think, O. K now. The drilling of this well was very similar to that of No. 4 & 5. We are down ab't 1,000 feet—no oil as yet.

Yours truly,

(Signed) A. R. GUMAER,
Gen. M'n'g'r.

J. W.:

I expect to send you estimate on refinery to-night. They are less than I expected.

(Signed) G.

311 EXHIBIT 11. May 1, 1888. (Signed) C. E. W., Notary.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages beyond the amount of tolls paid thereon nor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECHERT,
General Manager.

Number	Sent by	Rec'd by	Check.
B 35.	Gl.	AM.	13 paid.

EXHIBIT No. 5. (Signed) C. N., Notary Public, December 2nd, 1887.

Received at the Western Union building, 195 Broadway, N. Y., Oct. 7, 1886.
Dated Canon City, Col., 7.

To J. Wallace, pres't, 304 Greenwich St., N. Y.:

Six down five hundred feet. Ignore my proposition third. Make new one to-day.

(Signed) A. B. GUMAER, *Gen. M'g'r.*

[Written across the face:] 175. 4622. 6.20 p.

EXHIBIT 12.

Ex. 12. May 1, '88. (Signed) C. E. W., Notary.

Telegram.

10, 12, '6.

J. Wallace, president, 304 Greenwich St., N. Y.:

Ok. I accept proposition one-tenth—have commenced work. November six eight eighty—Write abt Robinson matter. Struck oil, showing abt two bbls.

(Signed) A. R. GUMAER,
Gen. M'n'g'r.

312 EXHIBIT 13.

Ex. 13. May 1, '88. (Signed) C. E. W., Notary.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

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This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECHERT,
General Manager.

Number	Sent by	Rec'd by	Check.
1.	C.	J.	12 paid.

Received at Canon City 9.07 a. m., Oct. 12th, 1886.
Dated New York, 11th.

To A. R. Gumaer, G. M., Canon City, Colo.:

Without consulting trustees cannot consent to lease at more than tenth royalty.

(Signed) J. WALLACE, *Pres't.*

313 EXHIBIT 14.

Ex. 14. May 1, '88. (Signed) C. E. W., Notary P.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

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This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECHERT,
General Manager.

Number	Sent by	Rec'd by	Check.
W 101 A.	Jd.	Ii.	10 pd.

Received at the Western Union building, 195 Broadway, New York, Nov. 3, 1886.

Dated Canon City, COL., 3.

To J. Wallace, Esq., pres't, 304 Greenwich St., N. Y.

Order sucker rods for eight quick tubing will get here.

A. R. GUMAER,
Gen'l M'g'r.

[Written across the face:] 1750. 5.40 p. m.

314 EXHIBIT 15.

Ex. 15. May 1, '88. (Signed) C. E. W., Notary P.

Night Message.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages beyond the amount of tolls paid thereon nor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECHERT,
General Manager.

Number	Sent by	Rec'd by	Check.
B 156.	he.	hu.	17 paid—nite.

Received at the Western Union building, 195 Broadway, N. Y., Nov. 3, 1886.

Dated Canon City, Col., 2.

To J. Wallace, pres't, 304 Greenwich St., New York:

Engine not arrived purchased new one commence drilling Thursday gas big success can get material eight Denver.

A. R. GUMAER, *Gen. Mg.*

[Written across the face:] 2408. 4.18 a. m.

EXHIBIT 16.

Know all men by these presents that the Colorado Oil Company, by Jacob Wallace, president, and Ernest H. Gardner, secretary, have made, constituted, and appointed and by these presents do make, constitute, and appoint Augustus R. Gumaer its true and lawful attorney for it and in its name, place, and stead to enter and prosecute any suit or action at law for it and in its name, to defend any
315 suit or action at law instituted against it, to make and execute for it and in its name all bonds and other necessary papers in all legal proceedings which may be had for or against it, to collect and receipt for moneys, hereby giving and granting unto its said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof we have hereunto set our hands and seals the 20th day of July, in the year one thousand eight hundred and

eighty-six, and the corporate seal of said Colorado Oil Company hereto set and affixed.

Sealed and delivered in the presence of—

[SEAL.] (Signed) JACOB WALLACE, *President.*
E. H. GARDNER, *Secretary.*

Exhibit 16, May 1, 1888. (Signed) Chas. E. Waldo, notary public.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles Nettleton, duly appointed by the governor of the State of Colorado to take the acknowledgment and proof of deeds and other instruments to be recorded in said State of Colorado, do hereby certify that Jacob Wallace, president, and Ernest H.
316 Gardner, secretary, who are personally known to me to be such officers and to be the identical persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as the president and secretary of the Colorado Oil Company they signed, sealed, and delivered the foregoing instrument, with the corporate seal of the said Colorado Oil Company thereto affixed, as the free and voluntary act and deed of the said company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal this 20th day of July, A. D. 1886.

(Signed) CHARLES NETTLETON,
Commissioner for Colorado in New York,
115 & 117 *Broadway, N. Y. City.*

EXHIBIT 17.

EXHIBIT 17. May 1, '88. (Signed) C. E. W., Notary P.

J. Wallace, president; A. R. Gumaer, gen. man'g'r for Colorado.

Colorado Oil Company.

CANON CITY, *Dec.* 21*st*, 1886.

A. R. Gumaer, Esq.

DEAR SIR: In accepting your resignation as general manager of the Colorado Oil Company for Colorado I beg to express to you the regrets of the company and myself in losing your valuable services.

You accepted the position when the company was in a precarious condition. Under your able management its affairs to-day are in a much advanced condition and prospects brighter than ever. I beg to express to you for the company & myself our thanks for
317 the interest which you have taken in our affairs, and I beg to express the wish that our friendly relations may always continue.

With best wishes for your success I am, sir,

Yours very truly,

(Signed) ISAIAH JOSEPHI, *Vice-Pres.*

EXHIBIT 18.

EXHIBIT 18. May 1, '88. (Signed) C. E. W., Notary Publ.

J. Wallace, pres't; I. H. Josephi, vice-pres't; E. H. Gardner, sec. & treas.; A. R. Gumaer, gen'l manager.

Office of Colorado Oil Company, 304 Greenwich street.

NEW YORK, *Oct. 12th*, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: Your letter and telegrams received; former I answer immediately by wire as requested. As soon as I hear from you will have a talk with the directors regarding the leases. I trust that you will be able to send us the State & Frazier leases very soon, and I would like for you to try hard for the McCandless and Loback leases. Referring to the Robinson letter, I wire you what, in my judgment, you should do in the premises. If I remember aright, the outfit has a good boiler and engine, but the casing is in the well and would have to be drawn, which would be attended with some risk. Your telegram on No. 6 is very encouraging. I was down to see Eaton, Cole, Burnham Co. again to-day and push all your orders along.
318 I have also been working to get facts on the refining business and shall ply you with questions during the next few days. More again.

Yours very truly,
(Signed) J. WALLACE, *Pres't.*

P. S.—Have you ordered the large tank?

EXHIBIT 19.

EXHIBIT 19. May 1st, 1888. (Signed) C. E. W., Notary Public.

No. 10491.

Contract of Lease, &c.

S. J. Tanner
to
L. I. & C. & O. Mining Co.

Filed for record Dec'r 9th, 1882, at 11 o'clock a. m.
JNO. WILSON, *Recorder.*

This indenture made this 26th day of June in the year of our Lord one thousand eight hundred and eighty-two between S. J. Tanner of the first part, and the Land Investment and Coal and Oil Mining Company of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, in hand paid by the party of the second part, to the party of the first part, the receipt whereof is hereby acknowledged, and in the further considera-

tion of the covenants and agreements hereinafter mentioned to be kept and performed by the said party of the second part — executors and administrators, has demised and leased, to the party of the second part, the following-described rights, privileges, franchises of and pertaining and incident to the premises
319 herein described situate, lying and being in township 19th the county of Fremont and in the State of Colorado to wit: Northwest quarter of the northeast quarter of section twenty-two (22) township nineteen (19), range sixty-nine (69) containing forty (40) acres. Also the southwest quarter of the northeast quarter of section fifteen township nineteen, range sixty-nine containing forty acres. Which said rights, privileges and *and* franchises relating to the aforesaid premises are the exclusive right to sink wells or shafts upon said premises, to any depth for water, either mineral or non-mineral and to flow the same over said lands, also for oil, salt, salt water, illuminating gas, coal or any valuable mineral products and to raise and take the products therefrom and to occupy a sufficient and reasonable part of the surface ground, for the purpose of operating any such well or wells, shaft or shafts, and storing and removing the products thereof together with the right of ingress and egress thereto. To have and to hold, the said above-described rights, privileges, franchises and appurtenances, unto the said party of the second part, and their assigns, from the 26th day of June in the year of our Lord one thousand eight hundred and eighty-two for and during and until the 26th day of June, in the year of our Lord one thousand eight hundred and eighty-seven. And the said party of the second part, in the consideration of the demising and leasing of the aforesaid rights, privileges franchises and appurtenances pertaining to the aforesaid premises, by the said party of the first part, to the said party of the second part, does covenant and agree with the said party of the first part his heirs, executors and administrators and assigns, to pay to the said party of the first part as rent for the aforesaid rights, privileges, appurtenances one-twelfth part of the product of each well or
320 shaft that shall be sunk upon the aforesaid premises as long as such well or shaft shall be operated, said product to be delivered to said party of the first part at the top entrance of said well or shaft, in such receptacles or tanks as said party of the first part shall provide, without expense to the party of the second part. I also agree to give a clear and perfect title to twenty acres of said lease as a donation to said company, as soon as an oil well is found in paying quantities on said lease; the twenty acres to be one-half of the first-described land.

And the said party of the second part further covenants, that at the expiration of this lease or for forfeiture thereof, to deliver up possession of said premises, and that they will when said possession is so delivered leave the surface ground of said premises in as good condition as when they entered on the same reserving unto themselves the right to remove all machinery and fixtures placed on said premises by the said party of the second part, or their agents or assigns.

And it is expressly understood and agreed, by and between the parties aforesaid, that if the rent above reserved or any part thereof shall be behind or unpaid for thirty days after the day of the payment of the same, or if default be made in any of the covenants and agreements to be kept and performed, by the party of the second part or their assigns, for the period of 30 days other than the payment of rent aforesaid, it shall and may be lawful for said party of the first part to declare the term hereby created ended, but not without notice in writing to the party of the second part or his assigns of his election to so do and then only subject to the rights of the party of the second part acquired hereby.

In witness whereof, the party of the first part has on the
321 day and year above written, set his hand and seal and the party of the second part hath caused these presents to be subscribed by its president and attested by its secretary thereunto duly authorized and its corporate name and seal to be thereunto affixed on the day and year aforesaid.

S. J. TANNER. [SEAL.]
DAVID G. PEABODY, *Pres't.* [SEAL.]

[Seal of The L. I. & C. & O. Mining Co.]

Attest: EBENEZER B. ALLING, *Sec'y.*

STATE OF COLORADO, } ss:
County of Fremont, }

I, Geo. O. Baldwin, notary public in and for said county, in the State aforesaid, do hereby certify that S. J. Tanner, personally known to me as the person whose name is subscribed to the annexed deed of lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of July, A. D. 1882.

[Notarial Seal of Geo. O. Baldwin.]

GEO. O. BALDWIN.

322 *Certificate of Copy of Record.*

STATE OF COLORADO, } ss:
County of Fremont, }

I, J. H. Peabody, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of lease as the same appears upon the records of my office, on Book 23, page 39.

[SEAL.] Given under my hand and official seal this 1st day of May, A. D. 1888, at 2 o'clock p. m.

(Signed) J. H. PEABODY,
County Clerk and Recorder,
By ROB'T D. HALL, *Deputy.*

EXHIBIT 20.

Ex. 20. May 2, '88. (Signed) Chas. E. Waldo, Notary P.

Form No. 1.

The Western Union Telegraph Company.

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This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECHERT,
General Manager.

Number	Sent by	Rec'd by	Check.
2.	J.	J.	14 paid.

Received at Canon City 1.49 p. m. Nov. 2nd, 1886.
Dated New York, 2nd.

To A. R. Gumaer, Canon City, Colo.

323 Everything received. Can you get material for eight Denver? Fear railroad delays. Letter follows.

J. WALLACE, *Pres't.*

EXHIBIT 21.

Ex. 21. May 2, '88. (Signed) Chas. E. Waldo, Notary P.

Form No. 1.

The Western Union Telegraph Company.

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This is an unrepeated message and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECHERT,
General Manager.

Number 13.	Sent by Sg.	Rec'd by J.	Check. 8 paid.

Received at Canon City 6.46 Nov. 3rd, 1886.
Dated New York, 3.

To A. R. Gumaer, city:

All right buy material for eights in Denver.

J. WALLACE, *Pres't.*

324 EXHIBIT 22.

EXHIBIT 22. May 2, '88. (Signed) Chas. E. Waldo, Notary Publ.

Colorado Oil Co., 304 Greenwich street.

NEW YORK, *Nov. 2nd*, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: We are in receipt of your letters, statements, and vouchers, and regret to note that the engine had not yet at the time of writing arrived. In the event that you do not receive it by the time this reaches you buy one in Denver and use it for the next well. We will immediately buy material for well No. 8, and instead of buying you a 1,600-ft. cable will buy it 1,800 to 2,000 ft. In regard to 7, 9, and 10, will report on latter part of the week. We recognize the importance of all you have to say in your communications and all shall have our attention. This is election day, and as every one is closed nothing much can be done. If material for No. 8 can be had promptly at home buy it at once. We wire this to-day because the delay in transportation is so great; at the same time, if your answer is to buy here, you can rely on it being shipped at once.

Yours hastily,
(Signed) J. WALLACE, *Pres't.*

EXHIBIT 23.

EXHIBIT 23. May 2, '88. (Signed) Chas. E. Waldo, N. P.

Colorado Oil Co., 304 Greenwich street.

NEW YORK, *Nov. 12th*, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: I have not written you for several days, owing to sickness in my family, etc. I heard this morning from Mr.

325 Josephi that the party. I wrote you about some time ago, who intended making a visit to "Canon," for some reason or other now declines to do so. This is disappointing to me, but perhaps everything happens for the best. Trust you are having good luck with No. 8 and that all goes smoothly. Enclosed find letter addressed to Mess. Waldo & Baker. As soon as I receive their answer will give it my immediate attention. Regarding the refinery, please make careful estimate of the exact cost of constructing same and name as low a figure as possible that will cover all, including buildings, etc., and I shall do something at once. Have you heard anything from the Arkansas people lately?

Hastily, but truly, yours,

(Signed) J. WALLACE, *Pres't.*
B.

EXHIBIT 24.

EXHIBIT 24. May 2, '88. (Signed) Chas. E. Waldo, N. P.

Colorado Oil Co., 304 Greenwich street.

NEW YORK, *Nov.* 23*rd*, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: Your telegram received this morning was promptly answered. We await your letter alluded to therein and trust it will contain important information. I have been actively engaged in canvassing the new Co. question and intended having a little meeting of a few acquaintances of mine on Thanksgiving day to talk the matter up. We are doing all we can at this end to push along that cable. If, by inquiry at Pueblo, Denver, and Kansas City, you can hasten it you might write there. The A., T. & S. F. R. R. would be the route from Kansas City. The outfit for three wells
326 written about is promised to us very speedily, and the parties say that they will see that it gets beyond Chicago quickly. Further they will promise nothing.

Yours very truly,

(Signed) J. WALLACE, *Pres't.*
B.

Dictated.

EXHIBIT 25.

EXHIBIT 25. May 2, '88. (Signed) Chas. E. Waldo, N. P.

Colorado Oil Co., 304 Greenwich street.

NEW YORK, *Dec.* 11*th*, 1886.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: Your telegram duly received, and I "rustled" the engines; find they were shipped in solid car-load from Rochester on Dec. 4th, and party promised to wire the R. R. people and crowd them

along. Two boilers and three engines and fixtures made full car-load. I had to-day a letter from Mr. Josephi, in which he expressed himself as pleased with the reception you gave him, and I hope you were pleased with his visit. I have been so busy the past 3 or 4 days that I have neglected writing to you, and just now it is very late Saturday evening and I am anxious to get home; will write at greater length next week.

Yours very truly,

(Signed) J. WALLACE, *Pres't.*
B.

Dictated.

327 EXHIBIT 26.

EXHIBIT 26. May 2, '88. (Signed) Chas. E. Waldo, N. P.

Colorado Oil Co., 304 Greenwich street.

Mr. A. R. Gumaer, G. M., Canon City, Colo.

DEAR SIR: Your letters and telegrams received and we answered by wire to-day: "Forgot belting; everything else forwarded ought to arrive this week." More fully, on Dec. 3rd large amount casing and tubing, weight 20,000th, was shipped Erie Dispatch. On Dec. 4 car-load boilers and engines went forward over the Michigan Central R. R., shipped direct from Farrar and Treft works. This b. l. was stamped "in haste" by contracting freight agent, who promised that goods should arrive in 6 to 8 days, so you ought to have them by this time; hope the No. 8 is still humming away at the original rate. I have had a few letters from Josephi, all of a very pleasant nature. I have not been able to see much of the stockholders of the Co. in the last few days, as I have been head over heels in a lawsuit over a wax-paper patent that I am interested in—a case of preliminary injunction, called for next Friday, to stop the manufacture on the ground of infringement. It is possible I will have to go to Boston to-morrow to hunt up some evidence, so if you do not hear from me in a couple of days you may take it for granted I am out of town; as soon as Josephi returns will take action in regard to refinery or placing the oil.

Note what you had to say about Burton and will wire you if occasion requires it.

Yours very truly,

(Signed) J. WALLACE, *Pres't.*
B.

Dictated.

328 EXHIBIT 27.

Ex. 27. May 2, 1888. (Signed) Chas. E. Waldo, Notary Public.

No. 14852.

Oil Lease.

Stephen J. Tanner
to
A. R. Gumaer.

Filed for record at 3.10 o'clock p. m., Octo. 8th, 1886.

JAMES H. PEABODY, *Recorder*,
By ROB'T D. HALL, *Deputy*.

Recorded Book 28, page 368.

Oil lease.

Agreement made this sixth day of October 1886 between Stephen J. Tanner, party of the first part, and A. R. Gumaer party of the second part, witnesseth, that the said first party, in consideration of the sum of one dollar to him paid by the second party, the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party, have granted, leased, and demised, and do hereby grant, lease and demise unto the said second party, his heirs and assigns, all that tract or parcel of land situate in the county of Fremont, State of Colorado, and described as follows to wit:

The southeast quarter of section 15: the north half of the northeast quarter of section 22: the southwest quarter of the northeast quarter of section 22: the north half of the southwest quarter of section 15: about 2½ acres in the S. E. ¼ S. E. ¼ of section 16, which was deeded from McCandless to Tanner: and twenty-four (24) acres belonging to said first party, lying in the N. E. ¼ N. W. ¼ of section 22: all said land in township 19 south, of range 69
329 west. Always excepting from and not conveyed by this lease not to exceed 12 acres of land which before the date of these presents has been conveyed to McCandless, Smith, and John Locke lying within said section 15 township and range aforesaid. With the exclusive right to dig, bore, and mine for and gather all oils and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the aforesaid premises, to have and to hold the same for the term of twenty years from this date, or as long as oil is found in paying quantities; also the right of way to enter upon said premises for the purpose of operating, mining, or removing said oil and gases therefrom, and for the laying of pipes, either under or on said surface, for transportation of oil and gas and full power to erect all necessary buildings and tanks upon said premises, for the purpose of procuring and storing said oils and gases, with

the full right to the said second party of appropriating to his own use all of the oils and gases found upon said premises during said term. In consideration whereof, the said second party agrees to give the said first party one-tenth part of the oil produced and saved from said premises, to be delivered on said premises to the party of the first part, or said first party at his option may require of said 2nd party in lieu thereof, the net market price of said one-tenth part in cash less cost of transporting and marketing the same.

The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not to disturb any til-able land unless absolutely necessary to carry out the terms of this lease.

The party of the second part covenants to commence operations for said mining and boring purposes and to prosecute the
330 same on some portion of the above-described premises within ten (10) days from the date hereof, or the party of the second part shall within sixty days from said date commence and prosecute with reasonable diligence—delays by unavoidable accidents excepted—; the sinking or boring of one well on said premises to the depth of 1,200 to 1,500 feet, unless oil in paying quantities is sooner found, and such work then shall be prosecuted with reasonable diligence (delays by unavoidable accidents excepted) Failure of the party of the second part to comply with the terms of this clause shall nullify the lease and render it void. In case an encumbrance of any kind does or shall appear against the above-described premises or any claim which does or might interfere with the full, free and uninterrupted enjoyment and use thereof by the said second party as aforesaid, said first party agrees to pay off, discharge and satisfy the same. In default thereof said second party shall satisfy the same by applying in payment thereof all oil reserved to said first party, as above mentioned until such claim is fully satisfied.

Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks for drilling and operating all wells under this lease; and the right of way is hereby granted to the party of the second part, to build, construct, lay down and maintain, ditches and pipes in and upon said premises to convey water to the works of said party of the second part for use therein and thereabouts. It is expressly agreed by the said parties that said 2nd party shall sink at least (3) wells on said premises and shall complete two of said wells before May 1st 1887, and shall complete 3 derricks before said date, and that said second party may have the right as above specified to bore one of said two wells on the S. W. 4 S. W. 4 of said sec.
331 15.

The 2½ acres in S. E. ¼ S. E. ¼ sec. 16 are not to be drilled upon without the written consent of said first party Said second party shall have the right and power to remove their machinery derricks, tools and fixtures and other property at any time from said premises. If the party of the second part fails to keep and perform the covenants and agreements therein by him to be kept and

performed, then this lease shall be null and void and surrendered to the party of the first part. It is agreed that the foregoing stipulations and agreements shall apply to and bind the heirs, executors, administrators and assigns of the respective parties hereunto.

STEPHEN J. TANNER. [SEAL.]
A. R. GUMAER. [SEAL.]

All erasures and interlineations made before signing.

Witnessed by—
—— ——.

STATE OF COLORADO, } ss:
Fremont County, }

I, C. A. Morrison, notary public in and for said county, in the State aforesaid, do hereby certify that Stephen J. Tanner and A. R. Gumaer, personally known to me to be the persons whose names are subscribed to the annexed lease, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 8th day of October, A. D. 1886.

[Notarial Seal C. A. Morrison.]

C. A. MORRISON,
Notary Public.

332 Know all men that —— ——, of the county of Freemont and State of Colorado, the part- of the second part in the within contract described, made by —— —— to —— —— on the — of ——, 188–, do hereby assign, transfer, and set over the said contract unto —— ——, with all the property, rights of property, interests, power, and possession of eevery kind therein conveyed to —— ——; to have and to hold to my assignee, —— ——, aforesaid, and to — legal successors in said property and rights and to — assigns forever.

In witness whereof — have hereunto set — hand and seal this — day of ——, in the year 188–.

—— ——.

Signed, sealed, and delivered in the presence of—
—— ——.

STATE OF COLORADO, } ss:
County of Fremont, }

I, —— ——, do hereby certify that on this — day of ——, 188–, before me, a — in and for said county, personally came —— ——, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged that they

executed and delivered the same as — free and voluntary act for the uses and purposes therein set forth.

Given under my hand and — seal this — day of ——, A. D. 188–.

—— ——.

Certificate of Copy of Record.

STATE OF COLORADO, } ss:
County of Fremont, }

I, J. H. Peabody, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of lease as the same appears upon the
333 records of my office on Book 28, page 368.

[SEAL.] Given under my hand and official seal this 1st day of May, A. D. 1888, at 5 o'clock p. m.

(Signed) J. H. PEABODY,
County Clerk and Recorder,
By ROB'T D. HALL, *Deputy.*

EXHIBIT 28.

EXHIBIT 28. May 3, '88. (Signed) Chas. E. Waldo, Notary Public.

Exchange Bank of Canon City, Colo.

Mulock Bros. & Co.

CANON CITY, COLO., —— —, 188–.

Well No. 8.—Commence drilling soon as engine arrives; should be ship-ed immediately as follows:
1,300 ft. tubing.
1,300 " sucker rods.
One cable 1⅞ or 2 inch, 1,600 ft., " Phia."
1,000 ft. gas pipe, 1 inch.
1,000 " line " 2 "

Well No. 7.—Ready to commence drilling 15th Nov. if this order arrives:
One engine, 15-horse, Farrer & Traft.
" boiler, 25 " "
1,400 feet sucker rods.
1,400 " tubing.
1,400 " casing, 4¼ inch.

334 No. 9.—Ready commence drilling Dec. 1st if no delay on acc't arrival above orders.
One boiler, 25-horse, Farrer & Traft.
" engine, 15 " "
" cable, 1⅞ or 2 inch, 1,600 ft.

1,400 ft. sucker rods.
1,400 " tubing.
1,400 " casing, 4¼ in.
1,000 " line pipe, 2 in.
1,000 " steam " 1½ in.

Well No. 10.—One engine, Farrer & Treft, 15-horse.
1,400 ft. sucker rods.
1,400 " tubing.
1,600 " sand line, ⅞ in. or 1 inch.

This will cover, I think, about all we will need for these wells, unless we should have some hard luck; have provided for all small items, derricks, &c.

(Indorsed:) United States circuit court, district of Colorado. Colorado Oil Co. *vs.* Agustus R. Gumaer *et al.* Depositions of Stephen J. Tanner, George O. Baldwin, August R. Gumaer, for defendants. Opened, published, filed Jun- 16, 1888. (Signed) William A. Willard, clerk.

335 And afterwards and on, to wit, the 1st day of December, A. D. 1888, there was opened, published, and filed in said court and in said cause the depositions of S. H. Baker and C. A. Morrison on behalf of defendants, and the said depositions are in words and figures as follows, to wit:

Depositions Baker et al. Behalf Defendants.

In the Circuit Court of the United States for the District of Colorado.

COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER and FLORENCE OIL COMPANY. } Equity.

To the above-named plaintiff, Colorado Oil Company, and to Messrs. Wells, McNeal and Taylor, its solicitors:

Please take notice that the depositions *de bene esse* of Sam'l H. Baker and Charles A. Morrison, who severally reside at the city of Denver, will be taken in behalf of the above-named defendants in the above-entitled cause, to be read in evidence on the final hearing thereof, at the office of F. A. Williams, a notary public in the city of Denver, in the county of Arapahoe and State of Colorado, and before said Williams, on the 14th day of May, 1888, commencing at the hour of 10 in the morning of said day and thence continuing from day to day at the same place or at the place the officers before whom the said depositions shall be taken may appoint until the whole of the said witnesses, or so many of them as attend for that purpose, be examined and their depositions completed, and you are notified to attend *and attend* and cross-examine the said witnesses if you desire so to do.

That said cause is in chancery, and the same is at issue.
336 Dated this 3rd day of May, A. D. 1888.
Very respectfully, &c.,
(Signed) A. MACON,
Solicitors for Defendants.

Received a copy of the above notice this 6th day of May, A. D. 1888.
(Signed) WELLS, McNEAL & TAYLOR,
Plaintiff's Solicitors.

STATE OF COLORADO, } ss:
County of Arapahoe, }

The depositions of Samuel H. Baker and C. A. Morrison, both of the said county, witnesses of lawful age, produced, sworn, and orally examined upon their several corporal oaths, commencing at 10 o'clock a. m. on the 14th day of May, A. D. 1888, at the office of F. A. Williams, a notary public in the city of Denver, county and State aforesaid, in pursuance of the notice hereto attached, by and before me, the said F. A. Williams; the person named in the said notice before whom the examination of the said Baker and Morrison, witnesses in a certain suit and matter in controversy now pending and undetermined in the circuit court of the United States in and for the district of Colorado, wherein The Colorado Oil Company is plaintiff and A. R. Gumaer and Florence Oil Company are defendants, were to be taken in behalf of the said A. R. Gumaer and Florence Oil Company, defendants, as well upon the cross-examination of the said plaintiff as upon the examination of the said defendants and upon none other.

At the day, hour, and place aforesaid I was attended by A. Macon, Esq., attorney for the defendants, by E. T. Wells, Esq., attorney for the plaintiff, and by the said witnesses.
337 And each of the said witnesses, being by me first severally and duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matters in controversy in the above-mentioned suit, testified as follows in answer to the following questions respectively:

Testimony of Samuel H. Baker.

Question by Mr. Macon attorney for the defendant-: State your name, age, occupation, and place of residence.

A. Samuel H. Baker; 32 years; attorney-at-law; Denver, Colorado.

Q. 2. Are you acquainted with the parties of this suit and how long have you known them?

A. I have known the defendant Gumaer five years, and have been acquainted with some of the officers of the plaintiff company since June, 1886.

Q. 3. State the names of the officers of the plaintiff company that you are acquainted with.

A. Jacob Wallace, president; Isaiah Josephi, vice-president; and S. A. Josephi, general manager.

Q. 4. State whether or not you met and conversed with Mr. Jacob Wallace about the latter part of June or the first of July, 1886, respecting the employment of the defendant Gumaer as the general manager for the plaintiff company; and, if so, state the substance of that conversation.

A. I had several conversations with Mr. Wallace and at Mr. Wallace'- suggestion with Mr. Gumaer on that subject. At first Mr. Wallace desired me to act as general manager, but the affairs of the company having become envolved and it becoming apparent that the general manager would be obliged to give bonds in the prosecution of suit and advance money for the running expenses of the company, we were both soon convinced that some other person besides
338 myself should act in that capacity. I suggested Mr. A. R. Gumaer's name as a proper party to accept that office, but explained to Mr. Wallace that Mr. Gumaer was cashier of the Exchange bank, and in addition to his duties in the bank he was owning and managing a large number of oil interests, which consisted of valuable leases and lands in fee simple and lands held under other rights, which obliged him, to protect his own interests, to sink several oil wells within a stipulated time, and that, while Mr. Gumaer was an energetic and able business man, I greatly feared that his private affairs would interfere *as* his acting as general manager of the Colorado Oil Company. Mr. Wallace urged that I introduce him to Mr. Gumaer and suggested that while Mr. Gumaer should be the responsible man and should receive whatever glory was attached to that position, if he accepted it, that he, Wallace, desired that I should assume personal charge of the business management of the company while Mr. Gumaer should look after the financial interests, and that if I would do that he would guarantee that I should receive a regular salary from the company of not less than $125 per month. This arrangement was to be outside of any existing agreement to look after the legal interests of the company in the lawsuits which were then imminent. I introduced Mr. Wallace to Mr. Gumaer, and after stating the purpose of our visit I left Mr. Wallace in Mr. Gumaer's cashier's room in the bank.

Q. 5. State what, if anything, was said between yourself and Mr. Wallace or between yourself, Mr. Wallace, and Mr. Gumaer at the time of the conversations in your last proceeding answer respecting any right or interest which the defendant Gumaer had in what was known as the Tanner lands, either by option or purchase or otherwise. If you had such conversation or conversations, give the substance of the same.

339 A. The conversations which I had with Mr. Wallace extended from about June 20, 1886, to the night of July 3rd, 1886. At a number of these conversations the question of Mr. Gumaer acting as general manager was discussed between us. Mr. Gumaer was sometimes present and sometimes only Mr. Wallace was present. It appeared to be very difficult to get Mr. Gumaer to consent to act as general manager. I learned from Mr. Wallace

that Mr. Gumaer had explained to him about Gumaer's connection with the Tanner lands, and I think Mr. Gumaer's option on those lands which had been drawn up and signed some time in the previous December was shown to Mr. Wallace, besides other leases and contracts and other papers on oil lands in the Arkansas valley which Mr. Gumaer then had. The only point which I understood kept Mr. Gumaer from accepting this position at that time was this fact of his having so much personal business to attend to that he could not give his attention to the duties of this office. I know that Mr. Wallace frequently stated that he was very well satisfied with the person that I had suggested for general manager; that if Mr. Gumaer was unable to attend to the matters of the company in person, that if I would look after the business management of its affairs under Mr. Gumaer's direction, that everything would run satisfactorily; and Mr. Gumaer's name being attached to the enterprise would place the whole enterprise on a better basis that on which it had previously stood.

Q. 6. State if procuring leases for the plaintiff company was a part of your duty for that company under your employment that you before mentioned. And, if so, what, if any, leases did you procure for it?

A. As a member of the firm of Waldo & Baker I had been employed to look after the legal interests of the company in the prosecution and defense of two lawsuits which were shortly
340 after instituted; for my services in this behalf I received compensation which we deemed a proper charge in that behalf. If Mr. Wallace's promise of regular employment which I mentioned in my answer No. 4 had been kept by the company I would under that arrangement have been expected to procure for the company whatever leases the company might advise me that they desired me to procure. After Mr. Gumaer had accepted the position of general manager I talked with him about assuming this position. He stated that Mr. (plaintiff objects to the witness stating what the defendant told him unless the statement was made in the presence of some officer of the company) Wallace had mentioned the matter to him, but that he had not authorized him to make any general employment, but had stated that whenever the company wished a lease procured he should counsel with either Mr. Waldo or myself about its terms, and that we should draw up the papers. The only leases which I procured for the company were known as the McCandless lease and the Jesse Frazier lease; these both procured after Mr. Wallace left some months, I guess, and each at the request of Mr. Gumaer, as general manager. When Mr. Wallace was in Colorado the question of procuring a lease on the Lobach property and one or two other adjacent properties were discussed, but Mr. Wallace said that in his judgment the company had all the land that they needed and more obligations to sink wells than they could fulfill. In the leases above referred to I me-nt leases upon lands belonging to private parties in the Arkansas valley. I also procured for the company, at Mr. Gumaer's request, some time in

the fall or winter of 1886, a lease upon several thousand acres of State school lands.

Q. 7. State whether or not you were present and took part in the negotiations between plaintiff company and the said Gumaer
341 on or about December, 1886, which resulted in the execution of a lease by defendant Gumaer to the plaintiff company of certain tracts of land situated upon what is known as the Tanner tract of land, together with other lands; and, if so, state who, if any one, acted on behalf of the plaintiff company.

A. Mr. Waldo and myself and Mr. Gumaer and Isaiah Josephi, vice-president of the plaintiff company, and Mr. S. A. Josephi, who was about to become general manager, were present. Mr. Isaiah Josephi acted for the company.

Q. 8. State what was the purpose and object which the parties had in the execution of the lease mentioned in your last preceding answer.

(Mr. Wells objects to the answer as irrelevant.)

A. Mr. Gumaer, it was claimed, was too busy with his private affairs to look after the interests of the company longer. The company were designing to put Mr. S. A. Josephi in as general manager in his place. This lease was then drawn up for the purpose of adjusting a small difference between the company and Mr. Gumaer and the lease was received by the company as a sort of a compromise and settlement.

Q. 8. State whether or not the lease about which you were interrogated in the last preceeding question was not drawn up and executed to cure certain defects and omissions in a lease between the same parties executed on the 12th day of October, 1886, and for more distinctly specifying the tracts of land which the plaintiff company were entitled to for each of the wells on the Tanner tract of land, and also to compromise and settle all questions respecting the plaintiff company's right to the lands or rather the lease of the lands made by S. J. Tanner to the defendant Gumaer on the 6th day of October, 1886.

342 (Plaintiff objects because leading and suggestive.)

A. I believe the lease itself states what defects it was intended to cure. I known that it does accurately state the amount of land that shall surround each well. I figured up the area of the circle whose radius is stated in the lease and of which the well was to be the centre. There was some talk that the plaintiff company should have made Mr. Gumaer assign the Tanner lease to them when he assumed the duties of general manager. It had just been found out that the Tanner lease was valuable, for I believe Mr. Gumaer had just struck oil in his first well. It was conceed- by all parties that the company never had any actual interest in that lease, for Mr. Gumaer had obtained it nearly six months before he became general manager, but in order that Mr. Isaiah Josephi might be satisfied, and especially in consideration of the company's waiving any interest in the Tanner lease, Mr. Gumaer consented to make this lease

to the company, it being then expressly understood that the company acquired no further interests in the lands than upon the portions that were set apart upon which it was agreed that they could set wells.

Q. 10. State whether Mr. Is-iah Josephi, at the time of the execution of the lease mentioned in the last question, received the same under protest or made any objection whatever to such settlement.

A. He did not; on the contrary, this settlement was made expressly to satisfy Mr. Isaiah Josephi and his brother, and Mr. Isaiah expressed himself as being perfectly satisfied with the settlement made with Mr. Gumaer.

Q. 11. State what, if any, other business than that you have answered herein did Mr. Isaiah Josephi transact on behalf of the plaintiff company while in Colorado at that time or about that time.

A. He compromised the lawsuits then pending against D.
343 G. Peabody in favor of this company, and against this company in favor of D. G. Peabody in the United States circuit court of this State, and I understood that he paid the money, between six and seven thousand dollars, through Mr. Waldo, which D. G. Peabody received in full settlement of all his claims against the company and for his stock therein. He ordered the lawsuits referred to dismissed and either had our law firm do it or did it personally.

Q. 12. State whether or not the plaintiff company sanctioned the acts of Isaiah Josephi, mentioned by you, in the settling and dismissal of certain lawsuits.

(Objected to because leading and because asking for a conclusion of law.)

A. I was so informed.

Q. 13. State whether or not the several suits mentioned by you were dismissed in pursuance of the agreement in settlement made by Isaiah Josephi before mentioned by you.

A. They were.

Examination of witness in chief closed.

Adjourned to half past two.

Cross-examination:

Q. 1. Have you any business relations with Mr. Gumaer at this time?

A. No, sir.

Q. 2. Are you in his employ as an attorney?

A. Am not.

Q. 3. Have you been in his employ as an attorney in any matter since you left Canon City?

A. I don't recollect anything since I left Canon City. I don't think I have acted as his attorney since February, 1887.

Q. 4. When did you move from Canon City?

A. I dissolved my law partnership in January, 1887, and went

East some months, but did not actually settle in Denver until
344 April 30th, 1887. I have since that time appeared in only one matter in which Mr. Gumaer, as well as others, were interested.

Q. 5. Were you his attorney while he resided in Canon City?

A. I was part of the time.

Q. 6. Did you confer with him or with anybody else as to what your testimony would be in this matter before coming here?

A. I have been asked to state what I recollected about these transactions by his attorney, Mr. Macon.

Q. 7. Did you state?

A. I did partially.

Q. 8. Were you subpœnoed to attend before the commissioner or did you attend voluntarily?

A. I was not subpœnaed.

Q. 9. When was it you made the acquaintance of Mr. Jacob Wallace?

A. About June 17th, 1887.

Q. 10. At Canon City?

A. Yes, sir.

Q. 11. Where did you first meet him?

A. In my office.

Q. 12. Did any person come with him?

A. He came alone.

Q. 13. Introduce himself?

A. He did.

Q. 14. When was it that you were first employed for the company?

A. The first afternoon I met him.

Q. 15. Had you ever had any correspondence with him before?

A. No, sir.

Q. 16. When did you next meet Mr. Wallace?

A. After supper the same evening.

Q. 17. Where was that?

A. Either at his hotel or on the street; we took a walk together.

Q. 18. How many interviews did you have with him from that time until the time when he left Canon?

A. I saw him two or three times a day every day until July 3rd, except when he was out of town.

345 Q. 19. Where did these interviews generally occur?

A. Sometimes in the hotel; sometimes on the street; sometimes in a buggy when we were riding down to the oil wells, and as frequently in my office.

Q. 20. When was it you took him to see Mr. Gumaer?

A. When I found I couldn't be general manager myself. Probably about the 22nd of June we walked up to Soda Springs two or three times and sat on the bridge, and when I found he wanted somebody else for general manager I introduced him to Mr. Gumaer.

Q. 21. Was the subject of your becoming general manager mentioned by Mr. Wallace at his first interview?

A. I don't think it was.

Q. 22. When was it first mentioned by him?

A. After he had been there two or three days.

Q. 23. Did he first express the desire to appoint you or did you suggest a desire to be appointed?

A. He said a new general manager who resided in Canon City was needed.

Q. 24. What did you say to that?

A. I assented to it and said that it would probably be better to have some one to manage the company who was a resident of the town.

Q. 25. Was that all you said?

A. No, sir.

Q. 25½. What else did you say?

A. I said I thought the business could be made to pay, and that it only required good management to make it do so. I then waited for him to say something.

Q. 26. Well, what did he say?

346 A. He said that he had heard from residents of the town that I understood more or less of the oil business, and that the banks recommended me as reliable and energetic, and that he didn't know but that I might like to engage in the business. I then said that if it could be arranged not to interfere with my practice that I thought I would like to accept such a position, as it would give me outdoor exercise, which I then felt I very much needed.

Q. 27. Who suggested the difficulties in the way of you becoming manager?

A. I suggested part of them and he suggested the rest.

Q. 28. Did you suggest any other person in your stead besides Mr. Gumaer?

A. I think I suggested Mr. J. P. Chapman. At least I spoke of several business men there in Canon. *Q. 29.* But after making inquiries about various names which I mentioned Mr. Wallace seemed to be attracted with Mr. Gumaer because of his being a banker.

Q. 29. Did you introduce him to Mr. Chapman?

A. I introduced him to several gentlemen, for I tried to make it pleasant for Mr. Wallace while he was there. I don't recollect introducing him to anybody besides Mr. Gumaer with a view of their becoming general manager.

Q. 30. Please name the oil interests which you say Mr. Gumaer was managing at that time.

A. He owned quite a number of acres of land in fee simple under which oil was supposed to exist. He had an option of purchase and bond for a lease on what is known as the Tanner ranch. He was the owner of a reservation which gave him the right to bore

347 for oil on large tracts of land in Fremont county. He was then organizing a company which he expected would handle these interests.

Q. 31. Was he working any of these lands at that time?

A. I think he was getting ready to bore for oil in the Tanner ranch; he had his derrick up.

Q. 32. Where was that derrick situated?

A. I think it was down there on the Tanner ranch.

Q. 33. Can you tell on what part of the ranch?

A. I believe it was over on the east side, adjoining the McCandless tract.

Q. 34. Was this the only derrick Mr. Gumaer had?

A. I am not sure that this derrick was set up; it was framed and there may have been other derricks framed; I did not know very much about Mr. Gumaer's oil business at that time; I only helped draw up his papers.

Q. 35. You went into the question of Mr. Gumaer's engagements at considerable length, though, at that time?

A. I knew in a general way that Mr. Gumaer was a very busy man and told Mr. Wallace that, unless his business would interfere, Mr. Gumaer's experience and personal knowledge of the business fitted him in a peculiar manner to act as a general manager.

Q. 36. You think now that there was no derrick standing on the Tanner ranch, do you?

A. There was some kind of a structure set up there, for I saw it going by on the cars. I knew Mr. Gumaer had been intending to bore there and supposed that that was his derrick set up. I have been told that it was only framed at that time.

Q. 37. When were you told so?

A. To-day, at this examination.

348 Q. 38. Since your answer was given that he had a derrick there?

A. Yes, sir.

Q. 39. Who advised you of this mistake?

A. Mr. Gumaer.

Q. 40. How many interviews did you have with Mr. Wallace after you introduced him to Mr. Gumaer?

A. Quite a number; I should say eight or ten.

Q. 41. Where did the interview occur at which, as you say, you learned from Mr. Wallace that Mr. Gumaer had explained to him about Gumaer's connection with the Tanner land?

A. We had a good many interviews, when Mr. Gumaer was present and when he was not, and it was talked over between us that Mr. Gumaer had all these interests that I mentioned; reference was constantly made to them. Mr. Gumaer, either during these days or at some later time, ofdered to sell the Tanner option and lease to this company, and the entire question of getting more leases was discussed by Mr. Wallace and Mr. Gumaer and myself, and Mr. Wallace stated that he did not think the company wanted any more lands; but the part of the Lobach ranch they already had, a part of the McCandless ranch, and a part of the Jesse Fraser ranch—all these things were talked over by us three at various times during those days. I cannot recollect when this subject was first mentioned.

Q. 42. Where did the interview occur at which, as you say, you learned from Mr. Wallace that Mr. Gumaer had explained to him about Gumaer's connection with the Tanner land?

A. Somewhere in Canon City.

Q. 43. You are not able to speak more specifically?

A. I think it was in Mr. Gumaer's private office. My im-
349 pression is that the papers representing these various interests of Mr. Gumaer's were shown to Mr. Wallace, for Mr. Wallace referred to Mr. Gumaer's leases in a way that would lead me to think that he had seen them.

Q. 44. What did he say about them that led you to think this?

A. He spoke of the manner in which they were drawn, and especially commended some of the provisions in them.

Q. 45. This was in Mr. Gumaer's private office?

A. I can't positively say where these papers were shown Mr. Wallace, if anywhere. Conversations which I had with him about the provisions of Mr. Gumaer's leases were sometimes held in my office and sometimes at various other places where I would meet him. I never saw Mr. Wallace read these papers.

Q. 45½. Gumaer's numerous oil leases were a common topic, were they in these conversations?

A. I don't remember ever referring to the matter but twice.

Q. 46. What occasions were those?

A. At the time that I suggested Mr. Gumaer as manager they were referred to generally as I have stated, and then after Mr. Wallace had become somewhat confidential with Mr. Gumaer he referred to the matter in such a way as to believe that he thoroughly understood that Mr. Gumaer had these interests.

Q. 47. That was the interview in Mr. Gumaer's private office, was it?

A. I think I went into Mr. Gumaer's private office and found Mr.
Wallace there. My impression is that Mr. Gumaer had in
350 his hand a lease which he owned upon the McCandless tract. I thought at the time and I think now that he was showing that paper to Mr. Wallace for some purpose of his own. The conversation which I had with Mr. Wallace about Mr. Gumaer's leases was shortly after this, probably in my office, for he then referred to these leases in a way I indicated in answer 34.

Q. 48. Did you before giving the last answer turn over and examine the last previous page of a copy of your deposition to see what you had there stated?

A. No, sir. I well recollected what I had stated. I turned to that page to avoid repetitions and save time by giving the number of the answer, which I otherwise would have had to repeat.

Q. 49. Who was present at this interview at Gumaer's private office when you say your impression is Gumaer had in his hand the lease upon the McCandless tract?

A. Mr. Gumaer and Mr. Wallace were sitting at the cashier's desk. Charlie Morrison was attending to the books and the customers of the bank. I came into the bank to see Mr. Gumaer, I believe, about some trivial matter, and I think that Mr. Gumaer called me in behind the bank counter, coming forward to unlock the catch-lock of the door, with the lease in his hand, for I think he referred to this paper, asking my opinion about an extention which had been written on the back of the paper, as I recollect it. He

went back to his seat near Mr. Wallace and I asked him the question I went in to ask and went out. I probably staid five minutes or less.

Q. 50. Who was present at the next interview which you
351 had at your office?

A. My partner, Mr. Waldo, was in the adjoining room at his desk; I think our clerk was in his little room adjoining mine. I believe the doors were closed partially if not entirely.

Q. 51. Now, what was it Wallace said at that interview?

A. Well, he talked over the probability of beginning the suit against D. G. Peabody and the probability of getting Mr. Gumaer as general manager; he referred a number of times in very complimentary terms to the ability of our firm as attorneys, and especially commended the execution of these leases, stating that they had evidently been drawn by some one who understood the business. That is how I got the impression that Mr. Wallace knew all about Mr. Gumaer's leases, and that is why I felt free to talk with him about these matters.

Q. 52. You say that Mr. Wallace thought the company had all the lands it needed; what position did Mr. Gumaer take about that?

A. Whenever I asked Mr. Gumaer if the company wanted any new leases he always quoted what Mr. Wallace had said, and said he would like to confer with the company at New York before he authorized the negotiation of any other leases. I had no authority to negotiate leases for the company unless I was so ordered by advices from New York.

Q. 53. Gumaer always represented to you, then, that he had no authority to secure new leases for the company, did he?

A. He made the representations I have stated, and said that in every case where a new lease was talked of authority to exe-
352 cute should come from New York; there never were but three leases so authorized by the company, and Mr. Gumaer told me that they had requested that I be specially employed to negotiate them.

Q. 54. What was Gumaer's position upon that question on the occasion when, as you testify, Mr. Wallace said the company had all the lands they wanted?

A. Mr. Gumaer said that he must be governed by the company in New York in this matter; that probably the company felt that they had not the necessary means to undertake to operate any more lands, and that certainly it was not sound business policy to secure new leases until they could make profitable those which they had.

Q. 54. Who was it, then, that suggested the securing of more leases?

A. I understood that the company ordered them; at any rate the general manager, Mr. Gumaer, employed me and paid my expenses to Denver to negotiate the lease on the State lands for the Colorado Oil Company; he did likewise in reference to the Jesse Fraser lease and the small lease on the McCandless farm. My recollection is that separate vouchers were drawn up and on receipt of the money I signed them.

Q. 55. But who was it that suggested or favored the securing of additional leases in this conversation in which, as you say Mr. Wallace said, the company had all the lands it wanted?

A. I do not recollect who introduced the subject; I know that I favored getting hold of as much oil land as possible on as favorable terms as possible, for I thought that it would be very valuable property at some time.

353 Q. 56. Is it your recollection now that you at that time suggested that course?

A. I think it was during Mr. Wallace's visit that the matter was talked over by all three of us. Mr. Wallace was somewhat timid and disliked to bring any further odium on the company by undertaking what he feared they would not perform and urged the necessity of making the plant, as it then stood, profitable before other obligations were incurred.

Q. 57. Is this all you recall now of that conversation?

A. I urged Mr. Wallace to secure a lease on the entire Lobach tract, nearly 400 acres more than they had, but the wells on this tract were unprofitable and it looked as if the oil district was further east, so that Mr. Wallace favored getting as much of the McCandless as he could, and also the Jesse Fraser farm, believing that the oil district was more to the east and south.

Q. 58. Is this all you recall now out of the conversation in which Wallace said the company had all the lands he needed? If not, give the rest of it.

A. I think I have stated the substance of all the conversation about extending the company's leases; I don't think the subject of procuring the lease upon the State lands was mentioned during Mr. Wallace's visit, but that it was arranged by correspondence some time during the fall of 1886.

Q. 59. Have you given now in this connection all that you at this time remember of what was said on both sides in the conversation in which Mr. Wallace said the company had all the lands needed?

A. Yes, sir.

354 Q. 60. How do you know that the company sanctioned what Isaiah Josephi did out here in respect to settling the Peabody suits—who was it so informed you?

A. I had in my office a certified copy of the articles of incorporation of that company, in which Mr. Isaiah Josephi was mentioned as the vice-president, as well as in certified copies of minutes of the company. The whole tenor of the correspondence between the firm and the company was that they desired an amicable settlement of this Peabody difficulty. Mr. Isaiah Josephi and his brother came out here, and Mr. Isaiah Josephi requested that the suit be dismissed. The money which was paid to compromise the suits was paid by drawing a draft on New York by Mr. Josephi. I never saw that draft, but I think it was drawn on the company. Mr. Josephi, as vice-president, told Mr. Waldo and myself that the company desired the suits dismissed. After these suits were dismissed the company paid our bill as attorneys. I never have until this day heard

that Mr. Isaiah Josephi's action was questioned or denied by the company.

Q. 61. This is what you mean, is it, by your answer of the 12th interrogatory-in-chief?

A. It is a part of what I mean by that answer.

Q. 62. Well, what other information have you on the subject?

A. A large part of these closing transactions with this company were carried on by my partner, Mr. Waldo. Much of that that I have stated I learned from him. I am very confident that the company had full notice of this transaction because I think we
355 wrote a letter to the company's secretary in New York, fully setting forth what we and Mr. Isaiah Josephi had done in this matter. I know that I suggested writing such a letter and I think Mr. Waldo wrote it. At any rate our old letter book would show.

Q. 63. Then in that settlement you represented the company and not Mr. Gumaer—that is, the settlement between Mr. Gumaer and the company?

A. In the settlement between Mr. Gumaer and the company on account of my specially personal relations I refrained from having much to do with these negotiations. Mr. Waldo represented our firm and more particularly looked after the interests of the company. I was called in towards the last because of my special knowledge of oil leases and to aid in effecting an amicable settlement.

Q. 64. What were the personal relations with Mr. Gumaer which induced you to refrain from taking part until you were called in?

A. I had been Mr. Gumaer's personal attorney for quite a time previous, and he felt and I felt that whenever any conflict arose between Mr. Gumaer and the company that, since I was interested in the welfare of both, I should not take any prominent part.

Q. 65. Who were present when Isaiah Josephi expressed himself so well satisfied?

A. Mr. Waldo and Mr. Isaiah Josephi and I think myself.

Q. 66. And who was it requested your presence at this negotiation and settlement?

A. I do not recollect; I think it was Mr. Waldo.

Q. 67. Why if you had before that refrained from partici-
356 pating at the request of Mr. Gumaer did you come into the negotiation at the request of somebody else?

A. I did not say that I had refrained at the request of Mr. Gumaer.

Q. 68. Didn't you mean to be understood that Mr. Gumaer said he thought you ought not to take a hand? How did you know his feelings if he didn't tell you?

A. I don't think Mr. Gumaer said anything about it.

Q. 69. Then, in telling what Mr. Gumaer thought, you were giving your own conjecture, were you?

A. I think I was perhaps influenced by general directions that Mr. Gumaer had given me at previous times about other matters.

Q. 70. Then Mr. Gumaer had given you to understand before this that you were his attorney and not the company's?

A. No, sir; he had never had said anything about that. He appreciated the delicate position in which I was placed, and when I told him that I didn't wish, under the circumstances, to have very much to do in this settlement he gave some sort of general consent and went into the room. I was present, in and out of the room, during the negotiations.

Q. 72. What did you refer to, then, in your answer in the 69 question?

A. I meant that at the time when I was employed by Mr. Gumaer to act as his attorney it was understood between us that I might act my pleasure if conflicting interests arose on the part of other clients that specially retained me for similar purposes for which I was retained by Mr. Gumaer.

357 Q. 73. Then he hadn't given you any general directions such as you testified to in the answer to question 69?

A. Yes, sir. He hadn't given me any particular directions in this particular case. All that had been said between us on this subject had been said a long time before about other cases.

Q. 74. To the effect that you could act your pleasure in such cases?

A. I might do as I pleased.

(Signed) SAMUEL H. BAKER.

Subscribed and sworn to before me this 14th day of May, A. D. 1888.

(Signed) FRED. A. WILLIAMS,

[SEAL.] *Notary Public in and for Arapahoe County and State of Colorado.*

Testimony of Charles A. Morrison.

Q. 1. State your name, age, occupation, and place of residence.

A. C. A. Morrison; age, 30; residence, Denver, at the present time; occupation, book-keeper.

Q. 2. Are you acquainted with the defendant A. R. Gumaer?

A. I am; known him about seven years.

Q. 3. State if you were in his employ; and, if so, when and how long and in what capacity.

A. I was in the employ of the Exchange bank, of which he was the cashier, about seven years as book-keeper, at Canon City, Colorado.

Q. 4. Examine the paper which I now hand you and state

358 what that paper is, if you know.

A. It is said here to be an oil lease between *the* A. R. Gumaer and the Colorado Oil Company.

Q. 5. Of what date is this paper and in whose handwriting is the same, if you know?

A. Dated the 12th day of October, 1886, and is in my handwriting.

Q. 6. State if this paper marked as Exhibit One of this examination, purporting to be a lease made by the defendant Gumaer to the Colorado Oil Company, was written by you on the day of its date.

(Plaintiff objects to the question because leading.)

Q. 7. State if this paper marked as Exhibit One of this examination, purporting to be a lease by the defendant Gumaer to the Colorado Oil Company, is in your handwriting; and, if so, when was the same written.

Plaintiff objects because counsel has already suggested the answer desired by the previous question.

A. It is in my handwriting, and to the best of my knowledge was written on the date as shown in the paper.

Exhibit One is herein offered in evidence.

Cross-examination:

Q. 1. Have you any distinct recollection about it?

A. Why, I couldn't state positively that that was the date that it was written upon; no, sir; but to the best of my knowledge it was.

(Signed) CHARLES A. MORRISON.

Subscribed and sworn to before me this 14th day of May, A. D. 1888.

[SEAL.] (Signed) FRED. A. WILLIAMS,
Notary Public in and for the County of Arapahoe and State of Colorado.

359 EXHIBIT ONE.

Oil Lease.

Agreement made this twelfth day of October 1886 between A. R. Gumaer party of the first part, and Colorado Oil Company party of the second part; witnesseth, that the said first party, in consideration of the sum of one dollar to him paid by the second party, the receipt of which is hereby acknowledged, and of the agreements hereinafter mentioned to be kept and performed by said second party, have granted, leased and demised, and do hereby grant, lease and demise unto the said second party its successors and assigns, all that tract or parcel of land situate in the county of Fremont, State of Colorado, and described as follows to wit: The southwest quarter of the northwest quarter (S. W. ¼ N. W. ¼) of section twenty-three (23) township nineteen (19) south of range sixty-nine (69) west.

With the exclusive right to dig, bore and mine for and gather all oils and gases, coal and rock, and all other valuable mineral sub-

stances found in solution or otherwise in and upon the aforesaid premises, to have and to hold the same for the term of twenty years from this date, or as long as oil is found in paying quantities; also the right of way to enter upon said premises for the purpose of operating, mining or removing said oil and gases therefrom, and for the laying of pipes either under or on said surface, for transportation of oil and gas, and full power to erect all necessary buildings and tanks upon said premises, for the purpose of procuring and storing said oils and gases, with the full right to the said second party of appropriating to its own use all of the oils and gases found upon said premises during said term.

In consideration whereof the said second party agrees to give the said first party one-tenth ($\frac{1}{10}$) part of the oil and gases pro-
360 duced and saved from said premises—to be delivered on said premises to the party of the first part.

The first party has the right to use for agricultural purposes whatever portion of said premises second party does not use and need for said oil and other purposes herein stated, and the second party agrees not to disturb any tillable land unless absolutely necessary to carry out the terms of this lease.

In case an encumbrance of any kind shall appear against the above-described premises, or any claim which does or might interfere with the full, free and uninterrupted enjoyment and use thereof by the said second party, as aforesaid, said first party agrees to pay off, discharge and satisfy the same. In default thereof said second party may satisfy the same by applying, in payment thereof all oil reserved to said first party, as above mentioned, until such claim is fully satisfied. Said first party further agrees to allow said second party to cut from the aforesaid premises all timber necessary to be used for derricks and for fuel, for drilling and operating all wells under this lease; and the right of way is hereby granted to the party of the second part to build, construct, lay down and maintain ditches and pipes in and upon said premises to convey water to the works of said party of the second part for use therein and thereabouts. The said second party hereby agrees to sink two (2) wells and complete three (3) derricks on or before May 1st 1887 on the following-described property to wit: One to be on the S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ sec. 15 and the others to be on either the N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ sec. 22, or the S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ sec. 15 t'w'p 19 S. R. 69 W. Said wells to be sunk subject to the conditions of a certain lease from S. J. Tanner to A. R. Gumaer which lease is recorded in Book 28 pages 368, 369, 370, 371, of
361 the records of Fremont county Colo.—said lease providing for one-tenth ($\frac{1}{10}$) royalty.

Said second party shall have the right and power to remove their machinery, derricks, tools and fixtures, and any other property at any time from said premises. If the party of the second part fails to keep and perform the covenants and agreements therein, by him to be kept and performed, then this lease shall be null and void and surrendered to the party of the first part.

It is agreed that the foregoing stipulations and agreements shall

apply to and bind the heirs, executors, administrators and assigns of the respective parties hereunto.

(Signed) A. R. GUMAER. [SEAL.]
—— ——. [SEAL.]

Witnessed by—
—— ——.

STATE OF COLORADO, } ss:
Fremont County, }

I, Charles E. Waldo, in and for said county, in the State aforesaid, do hereby certify that A. R. Gumaer, personally known to me to be the person whose name is subscribed to the annexed lease, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and my seal this twentieth day of December, A. D. 1886.

[SEAL.] (Signed) CHAS. E. WALDO,
Notary Public.

362 (Indorsed:) No. 15037. Oil lease from A. R. Gumaer to Colo. Oil Company. Not claimed or calculated.

STATE OF COLORADO, } ss:
County of Fremont, }

I hereby certify that this instrument was filed for record in my office at 8.30 o'clock a. m., Dec. 23d, 1886, and is duly recorded in Book 28, pages 448, 449, and 450.

(Signed) J. H. PEABODY, *Recorder.*

Fees, $3.00.

STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Fred. A. Williams, a notary public in and for the county and State aforesaid and the examiner named in the notice attached hereto to take the depositions of Samuel H. Baker and C. A. Morrison, the witnesses examined and testifying in the foregoing depositions respectively, do hereby certify that previous to their examination they and each of them were by me first duly and severally sworn to testify the truth, the whole truth, and nothing but the truth concerning the matters in controversy between the parties to the suit named in the caption of the said notice; that their said depositions were then taken orally and reduced to writing by me at my office, room 29, Tabor bl'k, in the city of Denver, commencing on the 14th day of May, A. D. 1888, and concluding on the same day, and that after the said depositions were taken and written as aforesaid the said oral interrogatories and answers thereto as
363 written down above were read over to and corrected by the said witnesses, and thereupon the same were respectively

signed and sworn to before me by the said witnesses, Samuel H. Baker and C. A. Morrison respectively, as appears above, at the place and on the day and year last aforesaid.

Witness my hand and notarial seal, at the county of Arapahoe and the State of Colorado, this 14th day of May, A. D. 1888.

[SEAL.] (Signed) FRED. A. WILLIAMS,
Notary Public in and for the County of Arapahoe and State of Colorado.

Fees of Plaintiff.

Notary's fees $10 10

Paid by plaintiff.

Fees of Defendant-.

Notary's fees $8 15
2 witnesses, $— each ..... $

Paid by defendant-.
(Signed) F. A. WILLIAMS.

(Indorsed:) 2161. C't c't of U. S. In equity. Colorado Oil Company *vs.* Augustus R. Gumaer *et al.* Depositions of S. H. Baker and C. A. Morrison for def'ts. Opened, published, and filed Dec. 1, 1888. (Signed) William A. Willard, clerk.

And afterwards and on, to wit, the 1st day of December, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

364 *Order: Hearing and Taken under Advisement.*

THE COLORADO OIL COMPANY *vs.* AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY. } 2161. In Chancery. Bill for an Injunction and for Other Relief.

At this day comes the said complainant, by J. G. Taylor, Esq., its solicitor, and the said defendant Agustus R. Gumaer, by A. Macon, Esq., his solicitor, also comes.

And this cause coming on now for final hearing upon the bill of complaint, the answer of the said defendant Gumaer, the replication to said answer, and the proof taken herein, and the court, having heard the same and the arguments of counsel, doth take the same under advisement.

And afterwards and on, to wit, the 22d day of December, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Decree; Appeal Prayed.

THE COLORADO OIL COMPANY *vs.* AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY. } 2161. In Chancery. Bill for an Injunction and for Other Relief.

This cause came on to be heard at this term of the court and was argued by counsel, and thereupon, upon consideration thereof, it was—

Ordered, adjudged, and decreed as follows: That the certain indenture of lease heretofore executed and delivered by one
365 Stephen J. Tanner to the defendant Agustus R. Gumaer, bearing date the 6th day of October, A. D. 1886, whereby the said Stephen J. Tanner granted and demised to said Agustus R. Gumaer those certain lands and premises situate at the said county of Fremont and known and described as the southeast quarter of section fifteen (15), the north half of the southwest quarter of section fifteen (15), the north half of the northeast quarter of section twenty-two (22), the southwest quarter of the northeast quarter of section twenty-two (22), about two and one-half acres of land in the southeast quarter of the southeast quarter of section sixteen (16), the same which was deeded from McCandless to Tanner, and twenty-four (24) acres of land lying and being in the northeast quarter of the northwest quarter of section twenty-two (22), in township nineteen (19) south, of range sixty-nine (69) west, excepting certain tracts, not to exceed twelve (12) acres in all, which before that time had been conveyed to McCandless, Smith, and Locke, lying within the said section fifteen (15), with the exclusive right to dig, bore, and mine for and gather all oil and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the said premises, for the term of twenty years from the date of the said indenture of lease, or so long as oil should be found in paying quantities, with a right of way to enter upon said premises for the purpose of operating, mining, or removing such oil and gases therefrom, and for laying pipes either under or upon the surface of said lands for the purpose of the transportation of said oil, and to erect all necessary buildings and tanks on the said premises for the purpose of procuring and storing said oils and gases, and with the right also to said Augustus R. Gumaer to appropri-
ate to his own use all the oils and gases found upon the said
366 premises during the said term, and with certain other conditions, provisos, and reservations therein contained, and which said indenture of lease was afterwards and on or about the 8th day of October, A. D. 1886, filed for record in the office of the recorder of the said county of Fremont, and there recorded in Book 28 thereof, at page 368 and the following pages of the said book of records, be by the said defendants within thirty days from the entry of this decree surrendered and delivered into the office of the clerk of this court for the use of the said complainant, together with an in-

denture of assignment duly executed and acknowledged by the said defendants respectively (said The Florence Oil Company subscribing and acknowledging the same by some proper officer of said company and affixing thereto its common seal), assigning, transferring, and setting over unto the said complainant the said indenture of lease, with all of the estate, right, title, and interest whatsoever which by virtue thereof they, the said defendants, or either of them have or at any time had in or to the lands and premises therein mentioned.

It is further ordered, adjudged, and decreed by the court that if the said defendants shall fail or neglect to deliver into the office of the clerk of this court within the time above limited the said indenture of lease, or in case they or either of them shall fail, refuse, or neglect to deliver into the office of the clerk of this court within the time above limited the deed of assignment of the said leasehold, as hereinbefore directed, they and each of them so defaulting shall be deemed and taken to be in contempt of this court, and the clerk of this court, who is hereby appointed commissioner for this purpose, may and shall, on application of the said complainant,
367 in his own name execute an assignment of the said indenture of lease and the leasehold thereby let and demised and all rights, privileges, and advantages which by virtue thereof the said defendants or either of them at any time had in or to the premises, rights, easements, and privileges or any thereof in the said indenture of lease mentioned, and that such assignment of the clerk in pursuance hereof shall be of the same effect as if signed, sealed, acknowledged, and delivered by the said defendants.

It is further ordered, adjudged, and decreed that said defendants and each of them, their officers and servants, be from henceforth forever restrained and enjoined from encumbering the leasehold estate, rights, and privileges by the said indenture of lease granted or any thereof, and from obstructing, removing, using, or consuming from the said premises or any thereof, in the said indenture of lease described, any oil, gas, metal, or mineral, whether found in solution or otherwise, and from intermeddling with the said premises or with the complainant's possession thereof, and from obstructing or interfering with plaintiff's possession and enjoyment of the wells thereon situate and in the bill of complaint mentioned, and from subverting, tearing down, or destroying the derricks erected at or over the said wells or either thereof, or the machinery, tools, and implements of complainant thereat, and from molesting, assaulting, or maltreating the officers, agents, servants, or employés of the complainant at the said premises or in going to or from the same, or in possessing, operating, and enjoying the said premises or the rights and privileges by the said indenture of lease granted, or in extracting, removing, and taking to its own use the oil, gas, metals,
368 or minerals found or *or* being in the lands in said first aforerecited indenture of lease described, whether in solution or otherwise, conformably to the said indenture of lease.

It is further ordered, adjudged, and decreed that the leases in the bill of complaint herein mentioned, executed by the said Agustus

R. Gumaer to the said complainant, one thereof bearing date the 12th day of October, A. D. 1886, and purporting to let and demise to the complainant the southwest quarter of the northwest quarter of section twenty-three (23), in township nineteen (19) south, of range sixty-nine (69) west, with divers other rights and privileges therein expressed to be granted to the said complainant, subject to certain conditions therein mentioned, and by the other whereof the said defendant, Agustus R. Gumaer, assumed to let and demise to the complainant those certain premises therein described as the oil well, which has heretofore been sunk on the southwest quarter of the southwest quarter of section fifteen (15), in township nineteen (19) south, of range sixty-nine (69) west, in accordance with a lease from party of the first part of date October 12, 1886, and all rights and privileges in connection with said well, which said Gumaer has in said well and in the land whereon it is located by virtue of a lease from one Stephen J. Tanner, recorded in the records of said Fremont county, in Book 28, at pages 368–371; also the right to complete the oil well known as Colorado Oil Company's well No. 9, which is on an 80-acre tract of land, which consists of the southeast quarter of the southeast quarter of section fifteen (15) and the northeast quarter of the northeast quarter of section twenty-two (22), in township nineteen (19) south, of range sixty-nine (69) west, of the sixth principal meridian, and the right to sink one other oil well on such part of said 80-acre tract last above described
369 as said party of the second part shall select, and also all right and privileges and title which said party of the first part has under and by virtue of said certain lease from one Stephen J. Tanner, of date October 6, 1886, recorded in the deed records of Fremont county, in Book 28, at pages 368–371, in and to a tract of land seventeen (17) rods square, whereof said well No. 9 is the center, and in and to another tract of land 17 rods square, whereof the well above specified as hereafter to be located and sunk shall be the center, be, and the same hereby are, cancelled, annulled, and from henceforth taken for naught, and that as well the said complainant as the said defendant be relieved and discharged of all and singular the grants, covenants, conditions, and provisos thereof.

It is further ordered, adjudged, and decreed that complainant recover of and from the said defendants its costs in and about this said suit expended, to be taxed, and that execution issue therefor.

Whereupon the said defendants say that they will and do appeal from the decree aforesaid of this honorable court to the Supreme Court of the United States; and inasmuch as the said defendants here now expressly say that they do not nor will apply for dissolution or modification of the injunction by the decree herein awarded against them pending the said appeal—

It is ordered by the court that the defendants in their said appeal give bond in the sum of two thousand dollars, and that said bond be given within thirty days.

And afterwards and on, to wit, the 4th day of January, A. D. 1889, the same being one of the regular juridical days of the

370 November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Motion to Amend Decree Denied.

THE COLORADO OIL COMPANY
vs.
AGUSTUS R. GUMAER and THE FLORENCE OIL COMPANY.
} 2161. In Chancery. Bill for an Injunction and for Other Relief.

At this day comes the said complainant, by E. T. Wells, Esq., its solicitor, and the said defendants, by T. M. Patterson, Esq., their solicitor, also come.

And the motion of the said complainant to amend the decree herein coming on now to be heard is argued by counsel, and, the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

And afterwards and on, to wit, the 7th day of January, A. D. 1889, came again the said defendant, Augustus R. Gumaer, by his solicitors aforesaid, and filed in said court and in said cause his bond on appeal to the supreme court, and the said bond is in words and figures as follows, to wit:

Bond on Appeal.

371 THE UNITED STATES OF AMERICA,
District of Colorado.

Know all men by these presents that A. R. Gumaer, as principal, and E. L. Gumaer and T. M. Harding, as sureties, are held and firmly bound unto The Colorado Oil Company in the full and just sum of two thousand (2,000) dollars, to be paid to the said The Colorado Oil Company; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at the November term, A. D. 1888, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between The Colorado Oil Company, complainant, and Agustus R. Gumaer and The Florence Oil Company, defendants, judgment was rendered against the said Agustus R. Gumaer and The Florence Oil Company, and the said defendants having proved and been allowed an appeal from said decree to the Supreme Court of the United States and a citation directed to the said —— ——, citing and admonishing — to be and appear at a — court of the United States to be held at —— on the — day of —— next:

Now, the condition of the above obligation is such that if the said

Agustus R. Gumaer and The Florence Oil Company shall prosecute said appeal to effect and answer all damages and costs if they
372 fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

(Signed) A. R. GUMAER. [SEAL.]
(Signed) E. L. GUMAER. [SEAL.]
(Signed) T. M. HARDING. [SEAL.]

Approved Jan'y 17th, 1889.
(Signed) MOSES HALLETT, *Judge.*

Justification.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

E. L. Gumaer and T. M. Harding, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate the sum below set opposite his name—that is to say, as to E. L. Gumaer two thousand ($2,000.00) dollars, as to T. M. Harding two thousand ($2,000.00) dollars, over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

(Signed) E. L. GUMAER.
T. M. HARDING.

Subscribed and sworn to before me at Canon City this 14th day of January, A. D. 1889.

(Signed) JNO. WILSON,
[SEAL] *Clerk District Court, Fremont County, Colorado.*

373 (Indorsed:) Gen. No., 2161. Circuit court of the United States, district of Colorado. The Colorado Oil Company *vs.* Augustus R. Gumaer *et al.* Bond on appeal, $2,000.00. Filed this 17 day of Jan'y, A D. 1889. (Signed) William A. Willard, clerk.

Certificate of Clerk.

[Coat of arms.]

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending wherein The Colorado Oil Company was complainant and Agustus R. Gumaer and The Florence Oil

Company were defendants, as fully and completely as the same still remain on file or of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of court, at Denver, in said district, this third day of August, A. D. 1889.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Endorsed on cover: Case No. 13,911. Colorado C. C. U. S. No. 281. Augustus R. Gumaer and The Florence Oil Company, appellants, vs. The Colorado Oil Company. Filed November 6, 1889.

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Supreme Court U. S.
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SUPREME COURT

OF THE UNITED STATES.

RECORD, CASE No. 13,911.

AUGUST R. GUMAER,
Appellant,
vs.
THE COLORADO OIL COMPANY,
Appellee.

In the Supreme Court of the United States.

On appeal from the Circuit Court of the United States for the District of Colorado.

Brief and Argument on Behalf of Appellant.

THOMAS M. PATTERSON,
Solicitor for Appellant.

DENVER, COLO.
NEWS PRINTING COMPANY.
1893.

SUPREME COURT

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RECORD, CASE NO. 18,911.

AUGUST R. GUMAER *Appellant,*
vs.
THE COLORADO OIL COMPANY, *Appellee.*
} *In the Supreme Court of the United States.*

On appeal from the Circuit Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT ON BEHALF OF APPELLANTS.

STATEMENT OF THE CASE.

On June 15th, 1887, appellee, the Colorado Oil Company, filed its bill in equity in the Circuit Court of the United States for the District of Colorado against A. R. Gumaer and the Colorado Oil Company, in which it sought to have appellant, A. R. Gumaer, declared a trustee for it, as to a certain lease for oil lands in Colorado, and that he be

restrained from taking oil therefrom, etc., and that he be required to assign, set over and transfer said lease to appellee. A default was taken against the defendant, the Florence Oil Company, and appellant, A. R. Gumaer, filed his answer to the bill, to which replication in its usual form was duly filed. Testimony was taken before a master and depositions before commissioners, and at the November term, A. D. 1888, of said Circuit Court, the testimony was read and argument had, whereupon the court did find the issues for the plaintiff (appellee) and did order, adjudge and decree, that the lease heretofore taken by the appellant, in his name, should within thirty days from the entry of the decree be surrendered and delivered in the office of the clerk of the court for the use of the appellee, and that if appellant failed or neglected to deliver the said lease within the time limited, they should be deemed to be in contempt of court and that a commissioner be appointed, on application of appellee, in his own name, to execute an assignment of the said indenture of lease to appellee; and appellant was further perpetually enjoined from working or encumbering the lease-hold estate, etc. It is from this decree that the appeal is taken, and the error assigned is, that the decree is contrary to law and is not warranted by the evidence, and that the order and decree of the court should be in favor of the appellant, instead of appellee.

BILL OF COMPLAINT.

The bill of complaint sets forth the following facts:

That appellee, the Colorado Oil Company, was organized and became a body corporate under the laws of the State of New York in April, 1885; that the purpose for which it was organized was to mine, produce, refine and deal in oil and its products; that before the organization of the company, deposits of petroleum oil had been discovered in the County of Fremont and State of Colorado, and that

immediately after the company's incorporation, it elected to engage in the business of producing, refining and dealing in petroleum oil in that vicinity, and for that purpose appointed a general manager of its affairs for the State of Colorado, and they began to acquire the right to explore, search and bore for oil in the lands in the vicinity of the said district.

That it had been for a long time customary for those exploring for oil to procure from the proprietors of lands supposed to contain deposits of oil, leases, authorizing them to sink and bore wells on such lands and to extract the oil therefrom, etc., which leases would be for a long period of time, to-wit, for twenty years or more.

That on or about the 13th day of July, 1886, appellee appointed appellant, A. R. Gumaer, its general manager for Colorado; that before doing so appellee had sunk to a deposit of petroleum oil and found it in paying quantities upon the premises leased to it by one Edwin Lobach, from whom, before the appointment of Gumaer, they had obtained leases, and had sunk oil wells upon other lands leased to them, all before the appointment of appellant as the company's general manager, and that appellee had discovered oil in no other locality than that where it was then operating, and where it was engaged in sinking such wells and in their neighborhood.

That it became and was necessary for the profitable prosecution of its operations, that the company should obtain leases on other lands in that vicinity, and that at various times after the appointment of appellant to be its general manager, it gave directions to him to procure leases of any and all lands in the vicinity of the premises before that time demised to it by Lobach and McCandless; that it authorized appellant to sink and explore thereon for oil, etc., and that by a certain letter of attorney executed by appellee to appellant, upon the —— day of July, 1886, appellee expressly authorized appellant in the name of the appellee to negotiate for and secure the leases of such lands as were

contemplated, and that thereby it became and was the duty of appellant to seek out and negotiate for and procure leases such as were contemplated in the vicinity of the Lobach and McCandless tracts for the benefit of the appellee.

That on or about the 26th day of July, 1886, appellant applied to one James McCandless and procured from him a certain lease of kind mentioned for appellee, under the terms of which for the privileges granted, appellee agreed to tender to the said McCandless one-tenth part of the oil produced and saved from the premises, or in lieu thereof, one-tenth part of the cash proceeds of the oil so produced.

The bill sets forth several other leases of like kind and character procured for appellee by appellant after his appointment as such general manager.

It further alleges, that before and at the time of appellant's appointment as general manager, and from thence until and upon the 6th day of October, 1886, one Stephen J. Tanner, of the County of Fremont, was seized in fee of the following described lands situate in the County of Fremont: the southeast quarter of section 16; the north half of the southwest quarter of section 15; the north half of the northeast quarter of section 22; the southwest quarter of the northeast quarter of section 22, (about two and one-quarter acres of land in the southeast quarter of the southeast quarter of section 16, the same which was deeded from McCandless to Tanner,) and twenty-four (24) acres of land lying and being in the northeast quarter of the northwest quarter of section 22, before said: and that on or about the said sixth day of October, appellant, contriving to deceive and defraud appellee and to extort from it large sums of money, applied to said Tanner and procured him to execute and deliver to appellant a certain lease bearing date October 6th, 1886, granting and demising to appellant, in his own name, the lands above described, excepting thereout one certain tract of land not to exceed twelve acres in all, and to the exclusive right to

dig, bore, mine for and gather all oil and gases, coal and all other valuable mineral suitable, found in solution or otherwise in and upon the said premises: to have and to hold said premises for the term of twenty years, with the right of way to enter upon said premises for operating the same, etc., and in and by which lease appellant agreed to render to said Tanner one-tenth part of the oil produced, and that the said Tanner reserved the right to use for agricultural purposes such portions of the premises as the defendant should not use or need for boring for oil, etc., and that appellant was to commence operations for mining and boring and to prosecute the same on some portion of the premises within ten days from the date of the instrument, or within sixty days to commence the sinking and boring of one well to a depth of from 1,200 to 1,500 feet, unless oil in paying quantities should sooner be found: that the work should be pursued with diligence, and further, it was required by the lease that the appellant should sink at least three wells upon the premises and complete two of said wells before the first day of May, 1887, and should also complete three derricks before the date last aforesaid.

The bill further alleges, that on or about the 8th day of October, 1886, appellant caused the last mentioned indenture of lease to be filed for record in the office of the recorder of Fremont county; it further alleges, that appellant at the time was a man of little means and not supposed to be able to carry out or perform the covenants of the lease on his part to be kept and performed, and that the said Tanner was induced to enter into the said indenture, solely by reason of his knowledge that appellant was the general manager of appellee, and that one Samuel H. Baker was the attorney of appellee; and on information and belief it is alleged, that the said lease was procured for the benefit of appellee and that the conditions and covenants therein expressed to be kept and performed, would be kept and performed by appellee.

It is further alleged, that shortly after appellant procured said lease, appellee entered in and upon the southwest quarter of the southwest quarter of section 15, mentioned in said lease, and erected thereon a derrick and began to sink and drive thereon a well for the discovery of oils, and that subsequently appellee erected on the northeast quarter of section 22, certain other derricks and began to sink a well for the discovery of oil, and that appellant, until discharged from his position as general manager of appellee, prosecuted work upon the said two wells and sunk the first to a depth of one thousand (1,000) feet or thereabouts, and the second to a depth of about six hundred (600) feet; that in the one thousand (1,000) foot well appellee developed and discovered oil in paying quantities, but in the second well no oil had hitherto then been found.

The bill further alleges, that all the boilers, steam engines and other tools and material used in and about the construction of the said two derricks and the sinking of the said two wells, were the property of appellee, and all the labor employed upon the same was paid for by appellee, and that the supplies and labor used in said derricks and the boring of said wells amounted to about seventy-five hundred dollars ($7,500 00).

The bill further alleges, that appellant at all times gave out while sinking said wells and erecting said derricks, that he was doing it in behalf of appellee and that they were the wells of appellee and that the first mentioned well sunk and driven on the southwest quarter of the southwest quarter of section 15, aforesaid, was by appellant designated and ever since has been known as and called Appellee's well No. 8, and that the said second well was at all times designated and called and known as well No. 9 of appellee.

The bill further alleges, that by reason of the foregoing premises, appellant forthwith after the execution of the said Tanner indenture of lease, held, and ever since hath held, the estate, right and privilege in him by said lease vested,

solely in trust for appellee, and that it was and became his duty to assign, transfer and set over the same to appellee.

The bill further alleges, that on or about the 20th day of December, 1886, appellant contriving to deceive and defraud appellee, made and subscribed a certain paper writing, whereby appellant assumed to let and demise to your orator the southwest quarter of the northwest quarter of section 23, township 19, south of range 69 west, which was a portion of the land described in the lease from Tanner to appellant, and in this lease from appellant to appellee it was set forth that appellee agreed to sink two wells and complete three derricks on or before the 1st day of May, 1887, the said wells to be sunk, subject to the conditions of the said lease from Tanner to said appellent, before described, and that further contriving to deceive and defraud appellee, appellant caused said last mentioned paper writing to be falsely dated as of the 12th day of October, 1886, and that afterwards and on or about the said 20th day of December, 1886, said appellant executed a certain other paper writing whereby he, the said appellant, assumed to grant, lease and demise to appellee, that tract or parcel of land (described with greater minuteness), the same land described in the first mentioned lease dated December 20th, 1886, with all the rights and privileges in connection therewith which said Gumaer had in said well and in the land wherein it is located, by virtue of the lease from said Tanner to said Gumaer, with other provisions and descriptions not material to be here related.

The bill further alleges, that the indenture of lease purported to have been executed by appellant to appellee upon the 12th day of October, 1886, was never written or subscribed until on or about the 20th day of December, 1886, and that in so falsely dating the said instrument of October 12th, and executing the company's lease dated December 20th to appellee; appellant was contriving to deceive and defraud appellee and to cause it to appear contrary to the

fact that appellee was entitled to no part of the premises by the said Tanner demise to appellant, save the part thereof in the last paper writing mentioned, and that the said two wells, Nos 8 and 9, were in truth sunk and reserved by appellee solely by reason of the provisions, conditions and covenants of the last mentioned paper writing.

The bill further alleges, that on or about December 20th, 1886, one Isaiah Josephi, who was vice-president of appellee, came to Colorado and being then and there informed of the execution of the lease by Tanner to appellant, demanded of appellant that he should assign said lease and all rights and privileges thereby granted, to appellee; that thereupon appellant to deceive and defraud appellee, falsely represented and pretended to the said Josephi and caused Josephi to believe that appellant before accepting the position of general manager of appellee and before entering into its service, had obtained from said Tanner an agreement, whereby the said Tanner should bind himself to let and demise the said Tanner premises to appellant and that by reason of such prior agreement, appellant was entitled to negotiate for taking and procuring the said lease to himself without violation of his duty to appellee or the instructions and authority by appellee given to him, and that appellant had been expressly authorized by the president of appellee to use the materials, tools and supplies of appellee in and about the sinking of the said wells, payment of wages, the erection of the derricks and the like, whereas, in truth and in fact, the bill alleges on information and belief, that appellant at and before entering into the services of appellee, had not entered into any agreement with Tanner whereby Tanner was in any manner bound to let or demise to him the premises, and that appellant was never authorized by the president of appellee, to use the tools, materials or supplies of appellee, or employ its moneys in the improvement or development of the Tanner lands or any part of them, and if any such authority was given it was solely as

the result of the false representations and reports made by appellant to appellee and its agents; but, nevertheless, the said Josephi, believing the false representations of defendant and not knowing to the contrary, assumed to accept from defendant the last before recited lease dated December 20th, 1886, and in the name and in behalf of appellee, did execute the same.

The bill further alleges, that Josephi in executing the lease in behalf of appellee acted wholly without authority and that appellee never assented to or accepted the second last indenture of lease or in any manner waived or renounced its right to have said lease granted by said Tanner to appellant, assigned, set over and transferred to it.

Then follows the prayer of the bill, as before suggested.

(Record Abstract Folios 1 to 25.)

THE ANSWER.

Upon September 12th, A. D. 1887, appellant filed his answer to the bill of complaint.

The answer admits that appellee was engaged in exploring for and producing oil in the vicinity of Florence, Fremont county, Colorado, and that appellee appointed appellant its general manager for Colorado, on or about July 13th, 1886; that appellee had procured leases of different tracts of lands from the persons named in the bill of complaint, and admits that appellee had only found oil in paying quantity in the vicinity of the lands leased to it by Lobach and others in that vicinity; but it denies that it became necessary for the convenient or profitable prosecuting of appellee's business that appellee should obtain leases on other lands in the same vicinity.

It denies, that by virtue of his appointment as general manager it was his duty to procure other leases or rights to explore or sink or bore wells for oils in lands adjoining to or in the vicinity of Lobach and McCandless lands, and denies that appellee instructed appellant to procure leases

of lands in the vicinity of the Lobach and McCandless lands; and it denies that appellee ever requested or instructed him, at any time, to procure a lease to the Tanner lands or any part of them, and it avers that the only matters or things in any manner discussed or considered by appellee and appellant respecting the Tanner lands was as to the rights which appellant had in and to the Tanner tracts, under and by virtue of the certain agreement between appellant and Tanner, dated December 10th, 1885, whereby Tanner promised and agreed and bound himself to sell and convey all of said tracts and land to appellant, upon certain terms and conditions therein contained, on or before December 10th, 1886; and it alleges, that appellee well knew of the existence of the agreement before and at the time of appellant's appointment by it as its general manager.

It admits, that appellant procured the lease from Tanner, but it denies that he did so for the purpose of deceiving or defrauding appellee, or that by procuring it he did deceive or defraud appellee; on the contrary it avers, that the said lease was given by Tanner to appellant in pursuance of an agreement in good faith entered into by and between them on December 10th, 1885, and that the same was entered into by appellant in good faith and before the appointment of appellant as its general manager, and that before appellant's appointment as such general manager, appellee had expressly agreed that he, appellant, might procure a lease of the premises from Tanner to himself and not for or in behalf of appellee.

It denies that appellant had not sufficient means or was supposed not to have sufficient means to carry out or perform the covenants and agreements in the lease, or that the said Tanner in making said lease did so by reason of a belief that this defendant was the general manager of appellee or that said Baker was its attorney. It admits, that soon after procuring the lease from Tanner, he entered upon the southwest quarter of the southwest quarter of section 15, in

said lease described, and commenced the work of sinking thereon a well for oil and he prosecuted the work and found oil in the well in paying quantities and that in doing so he used the tools, implements, moneys and labors of appellee. It further admits, that said well has at all times been known and called Well No. 8, of appellee; but it avers, that all such acts and doings of appellant in and about the sinking of said well were so done by him under and by virtue of an agreement entered into between him and appellee long prior to such work, and admits that he built a derrick on the northeast quarter of section 22, in said lease mentioned, and denies that he sunk any well or wells thereon, other than as above stated in his answer; and he denies that he expended of the company's money in the sinking of said wells and the erection of said derrick, more than thirty-six hundred dollars ($3,600.00).

The answer further denies, that on or about the 20th day of December, 1886, or at any other time, appellant, with intent to deceive or defraud appellee, made or subscribed a paper writing, in the bill of complaint mentioned, wherein appellant demised to appellee, the southwest quarter of the northwest quarter of section 22, township 19, south range 69 west, but on the contrary it alleges, that the said lease was made and entered into between appellant and appellee in good faith and with the full knowledge on the part of appellee of the facts in the answer set forth, respecting the making and execution of the indenture of lease by Tanner to appellant and with notice of the rights of appellant therein by virtue of an agreement between Tanner and appellant, made and entered into long prior to his appointment by appellee, and that the said lease of December 20th, 1886, was a modification of the terms and conditions of the certain other lease and demise dated October 12th, 1886, made and entered into by and between appellant and appellee and accepting the said premises in the said indenture of lease of the date of December 20th,

1886, described, and that the said lease of October 12th, 1886, and of December 20th, 1886, was made and entered into by and between the parties thereto honestly and in good faith, without any purpose or intent to deceive or defraud appellee. It denies that the lease dated October 12th was not executed upon that date; it admits that Isaiah Josephi, the vice-president of appellee, came to Colorado as alleged in the complaint, and that Josephi as such vice president, then and there consummated the said indenture of lease executed by the appellant to appellee on the 20th day of December, 1886. It denies that Josephi ever demanded or suggested that appellant should assign and set over to the appellee the lease from Tanner to him dated October 6th, 1886.

It alleges, that appellant did use the tools, implements, men and money of appellee to sink well No. 8 and to erect derrick No. 9 and that he did so for appellee under the terms of the indenture of lease made by him to appellee on the 12th of October, 1886, and that in so doing he acted under the direction of and by virtue of the authority of appellee.

It alleges, that the said Josephi as such vice president, was then and there duly empowered to negotiate for and accept the said indenture of lease made to appellee by appellant, dated October 12th and December 20th, 1886, and each of them, and that the defendant accepted and ratified said act and doing of the said Josephi as its vice president and agent.

ADDITIONAL ANSWER.

The answer next sets up affirmatively the facts upon which it relies to defeat the claim of appellees, as in its bill of complaint set forth, which facts are as follows.

That as early as the year 1882, the Arkansas Valley Oil and Land Company explored for and sunk several wells in search of petroleum oil upon the lands in the vicinity of

the lands in controversy, and the fact of discovery and production of such oil by such company was widely and generally known, and that said company ever since has been actively engaged in prosecuting such work and in producing large quantities of oil from its various wells, and that said company in the year 1883, erected works for refining said oil and had refined all of its oil in such works; that about the year 1882, a corporation called the Land Investment & Coal & Oil Mining Company was organized to produce and refine petroleum oil in Fremont county, Colorado, and that appellant on or about March 13th, 1883, became a member of the corporation by the purchase of stock therein, and that said last mentioned company sank a number of wells on tracts of land described in the immediate vicinity of the said Tanner lands.

That by reason of his knowledge and belief, derived by him from said earlier explorations and the finding and producing of oil in paying quantities, he was induced to believe and did believe that the lands adjacent thereto probably contained oil in paying quantity, and that on the 19th of November, 1883, he projected and formed the intention and design of engaging in the oil business and to produce and refine the same in the county of Fremont, and in pursuance of that design, on the 19th of November, 1883, he made and entered into an agreement in writing with one McCandless, whereby the latter leased and demised to him for a valuable consideration the tracts of land in the indenture of lease set forth and the said lease from McCandless to Gumaer is set forth in full in the answer.

The answer also sets forth sums of money paid by Gumaer to McCandless under the lease. It further alleges that the lands of Tanner adjoined the lands of McCandless, and believing that the said Tanner lands contained oil in paying quantity, he did on the 10th day of December, 1885, seven months and more before he entered into the employment of appellee, make and enter into an agreement in

writing with said Tanner, whereby said Tanner bound himself to sell and convey to him all the lands in the indenture of lease set forth, as described in the bill of complaint, together with other and different lands, upon certain terms and conditions. This agreement is set forth in the answer in full. It recites that on the 10th of December, 1885, Tanner and Gumaer entered into a contract by which Tanner agreed to convey to Gumaer lands described in the contract numbering four hundred and forty (440) acres. The lands described in the lease which appellee by his bill of complaint prays should be assigned and set over to him, were a part of these four hundred and forty (440) acres. The contract further provided, that at a time not more than four months after the date of the agreement, he should pay to Tanner the sum of twenty-four thousand dollars ($24,000) for the lands, and it then continues "but if the said A. R. Gumaer at any time not more than four months from the date hereof shall elect to go upon said premises or any part thereof, and shall, within the time aforesaid, begin the work of preparation for sinking one or more wells for oil upon said premises, then from the date of such commencement of work, the contract above set forth shall cease and determine, and instead thereof, for the consideration before mentioned and in further consideration of such beginning of such work, said Stephen J. Tanner hereby agrees and covenants, that if said A. R. Gumaer on or before the 10th day of December, A. D. 1886, shall pay to said Tanner or shall deposit to the credit of said Tanner, in said Exchange Bank of Canon City, the sum of thirty-four thousand dollars ($34,000) as payment therefor, he, the said Stephen J. Tanner, will convey to said A. R. Gumaer the land above and hereinbefore described, by warranty deed with all usual covenants of title."

This contract is alleged in the answer to have been filed for record upon the day of its date, in the recorder's office of Fremont county.

The answer then alleges, that prior to the 1st day of April, 1886, appellant commenced the work of sinking a well upon the premises described in the contract, and he did other work upon said premises with a view of exploring the lands for the discovery of oil thereon, in compliance with the terms and conditions of his agreement with Tanner.

It further alleges, that soon after commencing the work of sinking the wells on the Tanner land, it was discovered that oil which was found in said well could not be used in the crude state to any profit, and that to realize a fair profit therefrom appellant must be prepared to refine the same, as no sale for crude oil in large quantities could be made in the vicinity of the said well, and for that reason appellant temporarily ceased and quit work on said well for the purpose of preparing to refine the said oil when produced.

The answer further alleges, that the said agreement so made between appellant and Tanner continued in full force and without any change or modification from the 10th day of December, 1885, until the 6th day of October, 1886, and that on that date and while the agreement was in full force and with the purpose of the respective parties thereto of changing and modifying the conditions of the terms of the agreement, and without any purpose or intent upon the part of either of the parties to abandon or nullify the agreement so made on December 10th, 1885, the said Tanner made, executed and delivered the indenture of lease dated October 6th, 1886, for the lands as set forth and described in the bill of complaint, and that Tanner then and there, for a valuable consideration, consented and agreed and did renew and extend the time for the purchase of said tracts of land in said agreement of the date of December 10th, 1885, from December 10th, 1886, to the 1st day of May, 1887. The contract for the extension of the sale of the Tanner lands under the December, 1885, agreement is set forth in the answer and shows the extension of time as before stated.

The answer further alleges, that on the 30th of April,

1887, and while the previous agreement between Tanner and appellant, concerning the lands, was in full force, said Tanner made and entered into another agreement respecting the sale and leasing of the said premises, whereby Tanner, in consideration of the payment to him in hand made by appellant of the full sum of thirty-five hundred dollars ($3,500.00) in cash, and the further agreement on the part of appellant to pay to Tanner the further sum of forty-nine thousand five hundred dollars ($49,500.00), bound himself to sell and convey all the premises in said December, 1885, agreement, set forth, and, further, that before the 20th day of June, 1887, having leased and contracted to purchase the lands from McCandless and Tanner, he proceeded to and did erect an oil refinery, which was completed on or about the 20th day of June, 1887, that the capacity of said refinery is one hundred and sixty barrels per day, and that up to date of the answer the refinery had been running every day to its fullest capacity and that it was still in full operation.

The answer further alleges, that prior to and at the time of the appellant's entry into appellee's employment as general manager, appellee well knew that appellant was the owner of all the rights, estate, title and claim to all the tracts of land set forth in said written agreements, and that he also well knew of the contract of December, 1885, between him and Tanner, and that the said agreements and each of them were in full force at the time he became the manager of appellee.

The answer further sets forth, that appellee with the full knowledge and notice of all the facts aforesaid, respecting the contracts between himself and McCandless and Tanner, employed appellant as its general manager, and that Tanner having executed to him the lease of date of October 6th, 1886, he did on the 12th day of October, 1886, make and enter into an agreement with appellee, whereby in consideration of keeping and performing the several terms and conditions in the agreement made by and

between appellant and appellee, dated October 12th, 1886, he did execute a lease granting to appellee all the estate, right, title and claim to all of said premises in said indenture of lease described, and said lease from Gumaer to appellee, dated October 12th, 1886, is set forth in the answer *haec verba*. In this lease the lease from Tanner to Gumaer of October 6th is expressly referred to, and the wells the lease provides for are, as stated in the lease to appellee: "To be sunk subject to the conditions of a certain lease from Stephen J. Tanner to A. R. Gumaer, which lease is recorded in book 28, pages 368, 369, 370, 371 of the records of Fremont county, Colorado, said lease providing for one-tenth royalty."

The answer further sets forth, that upon the execution of this lease to a portion of the Tanner tracts by appellant to appellee, appellee instructed him to perform the covenants and agreements therein provided in respect to sinking one well on the premises, and that appellant did proceed to sink said well, which well is known and called well No. 8 of appellee, and that in performing the labor and sinking said well, appellant acted for appellee and used the tools, implements and employed and paid the laborers out of his own money. It alleges, that he erected the derrick at well No. 9 and that it was all performed on behalf of appellee under the terms of his lease of October 12th, 1886, and that after the completion of the work, appellee with full notice that appellant claimed to have all the estate, right and privilege set forth in the Tanner lease of October 6th, 1886, and also the right to purchase the said tract of land in said lease mentioned by virtue of his agreement with Tanner of December 10th, 1885, and the extensions thereof, paid to appellant all of the moneys so advanced by him in and about the sinking of well No. 8 and the erection of derrick No. 9 and then and there ratified and confirmed all and singular the acts and doings of appellant in that behalf done and performed.

The answer then alleges, that on the 20th of December, 1886, appellant executed a new lease to appellee, which was then and there accepted and received by appellee, and the same was a modification of the lease before that time, on the 12th of October, executed by him to appellee. The lease of December 20th is set forth *haec verba;* and the answer concludes as follows:

"And this defendant alleges, that the complainants had at all times since the making and execution of said lease of October 12th and December 20th, 1886, kept and retained and do still keep and retain possession and enjoy all the estate, rights, power and privilege granted and conveyed by this defendant to complainants under and by virtue of said lease, and have retained possession and enjoyed all the rents, profit and emoluments derived therefrom, and this defendant denies all fraud, deceit and deception in the said bill of complaint alleged without, etc., and he prays to be dismissed with his costs. (Record, folios 34 to 75.)

REPLICATION.

Upon October 3rd, 1887, appellee filed his replication, which replication is in the usual short form.

All of the testimony in the case was by deposition; no witnesses testified in person before the court.

CONTENTION OF THE PARTIES.

Briefly stated, the contention of appellee is:

That the lease executed by Tanner to appellant was received under such circumstances as that in equity it was a lease to appellee; therefore, appellant had no rights thereunder, and that the leases subsequently executed by appellant to appellee of portions of the same premises were in fraud of appellee's rights in all of the leased premises and intended to operate as a fraud and deceit.

The contention of appellant is, that the lease by Tanner to him executed upon the 6th of October, 1886, demised the premises to him, in his own right, and not to him as trustee for appellee, and that the leases executed by him to appellee, dated respectively October 12th and December 20th, 1886, were binding and that the rights of appellee in the demised premises were limited and defined by the second last named instruments.

THE WITNESSES.

Seven witnesses testified in behalf of complainants (appellee) as follows:

Aaron C. Henderson, Jesse Frazer, Charles P. Lefever, Asa W. Lucas, Simeon E. Josephi, Isaiah Josephi, Jacob Wallace.

For defendant four witnesses testified, namely:

Stephen J. Tanner, George O. Baldwin, Augustus R. Gumaer, Samuel H. Baker and Charles A. Morrison.

But the convincing testimony in the case consists of letters and telegrams, which, appellant contends, conclusively establish his contentions.

THE TESTIMONY FOR APPELLEE.

TESTIMONY OF A. C. HENDERSON.

The testimony of Henderson, page 46, simply tends to prove, that upon October 6th or 7th, 1886, Baker came to him and represented himself as appellee's attorney and proposed to take oil lands from Henderson in his (Baker's) wife's name, to turn it over to Gumaer. Mr. Gumaer was not present. The land of Henderson bears no relation whatever to that which is in controversy; it was more than five miles away from the lands upon which appellee's wells were sunk; the only connection or knowledge witness pretends that Mr. Gumaer had with it was, that after he had executed the lease to Mr. Baker's wife, Gumaer was at his house, and

quoting his exact language, "I asked him if the company had accepted the lease. He said, he supposed they had. I asked him when work would be commenced. He said he could not tell. That was about all." (Record, folio 82.)

This witness' testimony showed, that the leases to which he referred were no longer in force.

In his cross-examination the following question was propounded and answer given:

Q. 34. Please state if you ever had any conversation with Mr. Gumaer since the execution of the said leases or either of them, and whether he stated to you or used the name of the Colorado Oil Company in reference to these leases or either of them?

A. I do not remember that he ever used the name of the Colorado Oil Company to me. (Record, folio 87.)

TESTIMONY OF JESSE FRAZER.

The testimony of Jesse Frazer is equally unimportant and throws no light on the real issues. It is found page 51 of the printed record. His testimony is to the effect that while Mr. Gumaer was manager for appellee, Gumaer leased a piece of his land for oil for appellee. The portion of his testimony relative to the Tanner tract is as follows:

Q. Did they tell you from whom they had obtained other leases for the company; if so, give their names?

A. They said they had got other leases. I do not know as they said it was for the company, but I supposed it was. I think they mentioned Mr. Tanner and Mr. McCandless, but I can't say certain. Perhaps some others. I think they mentioned Mr. Henderson.

Q. Did they tell you upon what terms they had gotten lease from Tanner?

A. I can't say whether they told me positively or not; my understanding was that they gave one-twelfth.

Q. Did they give you to understand that they had leased from Tanner for the company?

A. Well, that was the impression I had; I did not know of any other company but that. (Folios 89 and 90.)

On cross-examination, referring to his testimony in chief about his impressions that the Tanner lease was mentioned, the following occurred:

Q. Will you please state whether or not you can positively swear that in any of the conversations that you say you had with Mr. Baker and Mr. Gumaer, that either of them mentioned having leased Mr. Tanner's land?

A. I think they had leased Mr. Tanner's land; they told me of what they had leased; I feel pretty positive that they said it. (Folio 91.)

Further in the cross-examination it is disclosed (Folio 91 and 92) that so poor a memory had this witness, that a lease from him to the Colorado Oil Company, dated September 27th, 1886, was entirely forgotten by him and he could not recall it until the instrument was shown him, and in the cross-examination, referring to the occasion when Mr. Baker and Mr. Gumaer talked with him about the lease of his lands to the company, the following appears:

Q. You did not pay much attention to what was said by Mr. Baker and Mr. Gumaer in respect to leasing other lands, did you?

A. No, I did not pay any attention; when they agreed to commence work right away, then I leased it.

Q. State fully, all the conversation that took place between you and Mr. Gumaer at the several times you met him concerning the execution of the lease you made to the Colorado Oil Company?

A. I do not know; the most that I recollect, he told me he was agent for the company and had authority to cancel the old lease that had not then expired, and pledged to go to work in two weeks and be drilling in thirty days I think perhaps, or pay ten dollars a month for all the time they were not working; that was just the main part of our bargain. (Folio 94.)

TESTIMONY OF CHARLES P. LEFEVER.

The testimony of Charles P. Lefever is of no greater pertinency; it commences page 56; he was foreman of the Colorado Oil Company when appellant became manager in July, 1886; at that time the company was working three wells, two on the Lobach tract and one on the McCandless tract; he testifies that he sunk wells 8 and 9 on the Tanner farm; that Jacob Wallace, president of the company, visited the works in July, 1886; he says that while Wallace was here, he and Gumaer were talking and they spoke of getting leases from Lobach and Tanner, and that Gumaer said he thought a good deal of the Tanner tract.

A good portion of his testimony was directed to the cost of sinking wells 8 and 9, but the pertinent part is that which relates to the conversation between Wallace and Gumaer in reference to the Tanner lease. Upon that question in the cross-examination the following appears:

Q. 67. You state, Mr. Lefever, that you heard the conversation between Mr. Wallace and Mr. Gumaer in reference to renewing and obtaining leases for the company, and that it was one day near Florence; will you state just what Mr. Wallace said to Mr. Gumaer, using his exact words as near as you can?

A. I can express what I heard, yes. Mr. Gumaer started up the road. Mr. Wallace was talking with me as we were going up the road. Mr. Gumaer stopped and we caught him. Mr. Wallace says to him, "How about them leases?" Then he said, "That Lobach lease we want to hold it or renew it," I am not sure what it was he said, and he spoke about the Tanner lease, getting the lease of Tanner, and I saw they were talking business that did not concern me, and Mr. Gumaer said something, that he did not think much of the Lobach lease, but thought favorably of the Tanner lease or ranch, whatever it was; I passed on then. I left them talking. That is all I know about the conversation.

Q. 68. How long did you stop and listen to the conversation?

A. I did not stop at all; we were walking along.

Q. 69. And in passing Mr. Wallace and Mr. Gumaer you say you heard Mr. Wallace say something about renewing or obtaining leases from Lobach and Tanner, and you, thinking it was none of your business, passed on, did you?

A. After I heard what I stated, yes.

Q. 70. You paid very little attention to what was said at that time by either Mr. Wallace or Mr. Gumaer, did you not?

A. I paid just enough attention to listen what you heard and that was all.

Q. 71. Do you know what other conversation, if any, took place at that time between Mr. Gumaer and Mr. Wallace concerning the subject then being discussed by them?

A. Nothing only what I heard; what I stated.

Q. 72. When Mr. Wallace spoke to Mr. Gumaer about the subject of leases mentioned by you, can you not state what Mr. Gumaer's answer was, and, if so, give his exact words?

A. I could not any closer than what I did.

Q. 73. Will you state the exact words of Mr. Gumaer in reply to Mr. Wallace respecting obtaining leases, or any single word from which you inferred that Mr. Gumaer seemed to assent to Mr. Wallace's request?

A. I could not say anything more than I have said; Mr. Gumaer did not—I did not understand Mr. Gumaer to say whether he would or would not.

TESTIMONY OF ASA W. LUCAS.

The testimony of Asa W. Lucas, pages 68-69, is even more inconsequential than that of the others. His testimony is to the effect, that about three years before, on December 19th, 1886, he talked with Samuel H. Baker about leasing lands belonging to his wife; that Mr. Baker

claimed to be acting for appellee company and that Mr. Lucas' wife made a lease to him; that subsequently Baker signed the lease over to Gumaer, and that on October 17th, 1887, Gumaer, at his request, wrote a relinquishment of the lease. These lands were about six miles from the works of appellee and were not at all in the locality to which it confined its operations. Mr. Gumaer was not present at the conversation between the witness and Baker, and the lands he testified concerning bore no relation whatever to those in controversy.

TESTIMONY OF S. E. JOSEPHI.

The testimony of Simeon E. Josephi may be said to be more important. He is the brother of Isaiah Josephi, the vice president of the company, and succeeded appellant as the manager of the company in Colorado, becoming manager about December 20th, 1886. He testifies (folios 119 and 120,) that he was present at the conversation between his brother, Isaiah Josephi, and appellant, in December, 1886; that the talk was about the Tanner lease and that his brother demanded it of him for the company; that Mr. Gumaer replied that he had the lease long before he was manager for the Colorado Oil Company, and refused to surrender it; quoting from his testimony he further testifies: "My brother asked him then how it was if he did not intend to surrender the lease to the company when he used the company's money in developing it; he said that Mr. Wallace, president of the company, gave him permission to do so. My brother then asked him what protection we had for the property that was on the lease, and he told him that he would give him a lease to convey the ground upon which the property was on; then my brother, myself and Mr. Gumaer went from the Exchange Bank to Mr. Waldo's and Baker's office and drew up a lease to the company, conveying all his rights to the property, upon which No. 8 well stood and derrick No. 9, and with the privilege of

locating another well; I think about three acres around each well. Mr. Baker wrote out the lease, I think, on a type-writer and Mr. Gumaer signed it; this was about the 20th of December, 1886."

NOTE. The lease above referred to is the one heretofore mentioned as having been executed by appellant to appellee, December 20th, 1886.

Said witness further testifies (folios 121-122):

That he had several conversations with Mr. Tanner relative to the lease in controversy. That Tanner told him he had given a lease to Gumaer, knowing him to be the general manager of the Colorado Oil Company, and believing that the company would carry out the conditions of the lease. That Tanner further told him that he had given Mr. Gumaer an option on the land before and that Mr. Gumaer had hauled some lumber on the land pretending that he was going to work it. That when he gave this other lease to Gumaer the latter agreed to take up and pay off some mortgages that were on the land when they became due, and this condition was embodied in the lease. "He told me that he had no confidence in Mr. Gumaer and that he always supposed the lease would revert to the company."

The witness gives considerable more of a conversation between himself and Mr. Tanner, but there is nothing to show that Mr. Gumaer was present, or that Mr. Gumaer was ever connected with it in any way.

Much of this witness' testimony was devoted to the cost of sinking well No. 8 and erecting derrick No. 9.

The cross-examination of this witness will disclose that he was requested to produce the books and memoranda of the company, showing the expenditures of the company upon the well and derrick, and that under advice of counsel, he positively declined to produce them.

His testimony further shows, that Isaiah Josephi was vice president, that when he came out to Colorado he dis-

charged Mr. Gumaer from the company's services and for the company, employing him, the witness, and that he did much other business for the company, such as settling and compromising litigation and the like.

In his cross-examination (folio 134 and following) the following appears:

Q. 62. You have in your examination in chief mentioned having had several conversations with Mr. Stephen J. Tanner and have given Mr. Tanner's statements made to you: will you state why you, as the manager of the complainant's company of this suit, did not call Mr. Tanner and prove such statements made by him if the same were true?

A. For the reason that we found Mr. Tanner would be a very unwilling witness for our side, and we believe that he is so tied up by mortgages that the other side has some hold on him. We are also informed that Mr. Gumaer has an agreement with Mr. Tanner relative to the purchase of his land, and has promised to pay him forty-nine thousand five hundred dollars ($49,500.00), or thereabouts. We believe that Mr. Tanner is anxious to sell at the price named, and for that reason does not like to testify to any facts that might hinder or prevent that sale. Mr. Taylor, the attorney of our company, talked with Mr. Tanner, and preferred not to put him on the stand as our witness.

Q. Is there a man in Fremont county who bears a better reputation for truth and veracity than Stephen J. Tanner? If so, state who it is.

A. I do not know anybody who has a better reputation than Mr. Tanner for truth and veracity, and I have no desire to attack it, nor to reflect in any way upon his character.

Q. 64. Then you do not believe, from what you know of Mr. Tanner and his character for truth and veracity, that he would swear to a lie because of supposed financial embarrassment mentioned by you?

A. I do not believe that Mr. Tanner would swear to a lie, and I further believe that Mr. Tanner would substantiate everything I have said in regard to these interviews, that is, if his memory is good.

The testimony of this witness further shows (folio 138): That when Isaiah Josephi came to Colorado, in December, 1886, his business was in connection with the appellee company; that he made a settlement with Mr. Gumaer for moneys paid out by Gumaer; he settled two law suits with Mr. D. J. Peabody, and did other business for the company.

TESTIMONY OF ISAIAH JOSEPHI.

The testimony of Isaiah Josephi, (page 95) shows that he was vice president of the company, resided in New York, and that he first became acquainted with appellant at Canon City, Colo., in December, 1886; that he was also the trustee of appellee company. He further testifies, that upon the occasion of this visit "it became evident to me that the company was in need of a different manager for Colorado, and I then requested Mr. Gumaer to resign, and he consented to do so. He sent his resignation to the company and it was accepted by them. Mr. Gumaer was notified of the acceptance and a new general manager was elected." (Folio 163.)

He further testifies (folio 164): That he received, under protest, from Gumaer a lease of certain Tanner lands, but, he says, that no other trustee or officer of appellee company was cognizant of the fact that Mr. Gumaer had taken a lease from Mr. Tanner in his own name, and that he had no knowledge of his taking such a lease until he arrived in Canon City.

He further testifies (folio 164): That Mr. Jacob Wallace, the president of the company, had stated at a meeting of the board of trustees, that Mr. Gumaer was instructed to procure all the leases that he could for the company in

proximity to their developed ground; that Mr. Wallace had also on various occasions said that the company ought to have leases on the Tanner lands, but that he could not get leases thereon, because Tanner wanted to sell.

He further testifies (folio 165): That having taken the lease from Gumaer for the company, when he returned to New York the trustees declined to receive the lease and authorized the new general manager to bring suit for the recovery of the original lease from Tanner to Gumaer.

TESTIMONY OF JACOB WALLACE.

The testimony of Jacob Wallace, the president of the company, is the only additional evidence in appellee's behalf. He states that he is thirty-two years of age, resides in New York, is a merchant and manufacturer; that he was president of the Colorado Oil Company, appellee herein, since October, 1885, and that his position had been "that of looking after the general welfare of the company and urging forward its progress and success." He states that he met the appellant, Mr. Gumaer, first in June, 1886, at Canon City, Colo., and that he was elected general manager of the company on July 5th, 1886; that he was at that time in Colorado looking after the interests of the company. He further testifies, that full instructions were given to Gumaer to "at once secure as much more territory by lease as possible, in or around our then proved up territory." "I stated to Mr. Gumaer, that it would be very important to secure for the Colorado Oil Company an extension of the Lobach lease; also additional acreage if possible; also to secure leases on the Frazer, Tanner and McCandless lands; in fact, all that belt of land lying between the town and the river below and above, as I regarded it all as good."

He further testifies (folio 177): That Gumaer told him, "I have got about one hundred and sixty acres that I leased from McCandless some time ago; I have been paying him

twenty dollars ($20) per month for the lease instead of putting down a well, and if you will put down a well and comply with the lease, I will let you have it."

He says (same folio): That Mr. Gumaer never told him anything about his contract for the Tanner land, except that (folio 178) "between the 25th of June and the 5th of July, 1886, I had several conversations with Mr. Gumaer in different places, but all in Fremont county, Colorado; perhaps some of our conversations took place in Pueblo. In these conversations Mr. Gumaer and myself talked in regard to the land of Mr. Tanner, as well as all the other lands beginning and adjoining the company's land. In these conversations Mr. Gumaer said to me, Tanner owes about ten thousand dollars ($10,000.00) on his land and he wants to sell to pay off the mortgage. I think I can recall one of the conversations: When we were talking of getting leases, Mr. Gumaer said the Tanner ground is good ground to have, but we can't get it; I can get an option on that from some one (whose name he did not mention,) who has got an option on them for thirty-four thousand dollars ($34,000.00) to buy it; Tanner owes about ten thousand dollars ($10,000.00) and would like to sell to pay off the mortgage; Wallace, that is good ground and the company ought to buy it. I do not remember that I made any reply to it, as I wanted leases and was not authorized to buy land for the company."

He further says (folio 179): That he was with Mr. Gumaer a large part of the time between the 25th of June and the 5th of July, and their conversations were largely about the affairs of the company and the lands it was desirable to obtain for them; that he was with him so much and talked with him so much about the affairs of the company that he was unable to state any matter as occurring at any particular conversation, or as occurring at any particular place.

He says he was acquainted with Samuel H. Baker, who was the attorney of the company.

He puts in evidence the appointment of Gumaer as the general manager for the Colorado Oil Company, which in addition to the appointment states that the company would recognize no obligations contracted in behalf of the company in Colorado by any other person than Mr. Gumaer, its general manager. This is dated July 9th, 1886. (Folio 182.)

He claims (folio 184) that Isaiah Josephi had no authority whatever to make or accept the lease of December 20th, 1886; further, that the machinery, tools, material, funds and labor of the company were used by Gumaer in the sinking of the wells and the erection of the derricks; the wells being numbered 8, 9 and 10, and situate on the Tanner lease.

He further testifies (folio 186): That he first learned from Isaiah Josephi on his return to New York from Colorado in January, 1887, that Gumaer had gotten a lease from Tanner on the lands mentioned; he told me that well No. 8 was on the Tanner tract and that we had no security for it whatever, as Mr. Gumaer had taken said leases from Tanner in his own name and not in that of the company; that he had taken the lease of December 20th, under protest, in order to have the property on which the wells were sunk and derricks being erected in the name of the company.

Upon cross-examination he says: "My duties have been to look after the general interests of the company, to push its progress, to visit the field of active operations in Colorado and to see that the affairs of the company were being honestly and industriously administrated; in fact, I have exercised a general supervision of all its affairs." (Folio 189.)

He further states: That he assumed the responsibility of discharging the manager of the company at the time he came to Colorado and to appoint Mr. Gumaer, promising to have his action ratified by the company later.

He further testifies, upon cross-examination (folios 194–195): "I do not remember that I ever said anything to Mr. Gumaer prohibiting him from owning oil or coal lands in the Arkansas Valley. In regard to our conversation about the ownership of lands, I always told him that we did not care to buy lands. On several occasions I insisted that we ought to have five hundred (500) acres or more in one body just north of Florence, between the river and Florence. Mr. Gumaer did say to me that he was interested in the lands of the Beaver Land Company, and, in fact, drove me down over this ground to show me a model fruit farm that he was starting."

He says further (folio 198): "I conversed with quite a number of people in Florence and Canon City, but with scarcely any one on the subject of Mr. Gumaer's fitness for the position as general manager. As previously stated, they were all strangers to me and many of them introduced to me by Mr. Gumaer. I did not enquire much as to the fitness of Mr. Gumaer, the position he held in the community was recommendation enough, and in addition to this, one of our counsel had introduced him to me and I thought I was a judge of nerve and go when I saw it. I sized Mr. Gumaer up and I thought he was the man the company wanted."

He further testifies (folio 202): That he had a letter in his possession from A. R. Gumaer, dated August 21st, 1886; it was marked Exhibit No. 2; he had looked for another letter of that date but did not find any.

Upon his cross-examination from folio 203, he testifies to correspondence between himself and Mr. Gumaer, which is of the utmost importance, but to which the attention of the court will not be called until the testimony for appellant is presented; as to give the entire correspondence it will require exhibits filed by both appellant and appellee.

The foregoing comprises the substance of all the testimony given in behalf of appellee, the complainant below.

TESTIMONY FOR APPELLANT.

TESTIMONY OF STEPHEN J. TANNER.

The first witness testifying in behalf of appellant was Stephen J. Tanner; he testified (Record, page 141,) that his age was 51 years; resided at Florence, Colorado; his occupation was that of a farmer; that he had known Mr. Gumaer about six years and the appellee company about two years.

He was shown an instrument and asked to state if he knew what paper that was; he answered as follows: "This is an option sale executed by me to Mr. Gumaer in 1885; it was executed on the 10th day of December, 1885."

He further testified that the lands mentioned in the option sale were the lands afterward leased by him to Gumaer; that is, about three hundred and sixty (360) acres out of the four hundred and forty (440) acres were so leased. He further testifies that the lease was executed October 6th, 1886. The following question and answer then appears:

Q. 6. State if you made said lease to the defendant, A. R. Gumaer, direct and without any reference to the position that he then held, if any, with the Colorado Oil Company, the plaintiff herein?

A. I made the lease to Mr. A. R. Gumaer direct, without any reference to the Colorado Oil Company, believing that he was able to execute the terms of the lease which required him to enter upon the land and commence operations within ten days.

NOTE. The contract of option was filed and marked Exhibit 1; this option contract is set out in full, commencing page 169, folios 290 to 293; its substance has been before stated.

Mr. J. G. Taylor cross-examined this witness. The court will recall, as is shown by appellee's testimony, that this

attorney had talked with Mr. Tanner, and as a result of his conversation declined to call him as their own witness. His cross-examination consisted of about three questions, not one of which relates in any way to his execution of the option contract and lease to Mr. Gumaer.

TESTIMONY OF GEORGE O. BALDWIN.

The next witness in behalf of appellant was George O. Baldwin, whose testimony commences page 142, record. It relates wholly to the early discovery of oil in the Arkansas Valley, his familiarity with the ground in controversy; that he had a lease upon the Tanner land himself upon one occasion for an oil company, and that the existence of oil was notorious in that section.

TESTIMONY OF A. R. GUMAER.

Mr. A. R. Gumaer, appellant, is the next witness. His testimony commences page 145. He testifies that he resided at Canon City and was general manager of the Florence Oil and Refining Company, and is 35 years of age; that he was one of the defendants. He identifies Exhibit 1, the contract of option executed by Tanner to him upon December 10th, 1885; that in pursuance of its terms he had the land surveyed and purchased the outfit for the derrick complete, with the exception of a few boards, and he laid all the sills and laid all the timber frames on the portion of the ground covered by the contract; that he did not prosecute the work, because at that time there was no market for crude oil; that he talked the matter over with Tanner, and that the latter agreed to give him a further lease covering certain points, that is to say, what should be done with the oil and who should own it after the option had expired, and this he would do as soon as he got ready to make further developments. He testifies, that Tanner executed what is known as the Tanner lease to him on the 6th of October, 1886; that he became acquainted with the fact that the

country in and about what is known as the Tanner tract of land, contained petroleum oil in 1883; he then states how he learned that fact; that he had an interest in an oil company as early as 1883, and that he was interested in other lands and leases from 1883 forward; that he had obtained a lease to the McCandless land as early as November, 1883, and also to another tract below the McCandless lease, and that he had an interest in fee and in oil rights to the total of about six or seven thousand acres; that was at and before the time he was made general manager of the appellee company. He testifies (folio 255), that before he was employed as the Colorado manager by Jacob Wallace, its president, he explained to him fully the contracts he had with Tanner for the Tanner tracts, and he further states, that he had correspondence with the plaintiff company, through its president, concerning the Tanner property.

As to whether or not appellee company had knowledge of appellant's contract of December 10th, 1885, with Tanner, and whether he was employed by the company with knowledge of that contract, and as to whether his lease to the company of a portion of the Tanner tract, dated October 12th, was with the knowledge, approval, and at the request of the company, and as to whether or not the subsequent lease of December 20th, 1886, amendatory of the October lease, was made with the knowledge and approval of the company, is of vital importance, and at this point, the attention of the court will be called to the correspondence, both by letter and telegram, bearing upon that subject.

It may be preliminarily stated, that the testimony of Mr. Gumaer asserts that all of these things were with the knowledge of the company, and done with the company's approval, and that the utmost good faith was observed by him in dealing with the company, throughout.

At this point the attention of the court is called specifically to the Tanner agreement of the date of December 10th, 1885, (folios 290–292): It is an agreement by Tanner

that he will convey to Gumaer the lands described at any time within four months of the date of the agreement upon the payment of the sum of twenty-four thousand dollars ($24,000.00). It further provides, that if Gumaer at any time within four months after the date, shall elect to go upon the premises within that time and begin the work of preparation for sinking one or more wells for oil upon the premises, that the option of purchase is set aside and instead thereof Tanner agrees that if Gumaer, on or before the 10th of December, 1886, shall pay to Tanner thirty-four thousand dollars ($34,000.00) for the land, he will convey the land to him. It is further shown that there is endorsed upon that contract by said Tanner, an extension of it bearing date October 6th, 1886, renewing the life of the original agreement until the 1st of May, 1887; both the original contract and the extension of it were filed for record in the recorder's office of Fremont County upon the respective dates of their execution, as shown by the exhibits.

THE CORRESPONDENCE.

Upon August 21st, 1886, Gumaer writes a letter to Mr. Wallace, the president of the company, which is Exhibit No. 3, folio 298, which commences—

"*Dear Sir:*—I think it would be a good scheme to get some party to put up the cash to cover the option I hold on the four hundred and forty (440) acres: I think thirty-four thousand dollars ($34,000.00) is about the best price it can be bought for; say some party or parties put up the amount as a loan or an advancement, as may be agreed upon, and when the amount of purchase money is paid back, together with say six (6) per cent. interest, then the property to be owned jointly.

* * * * * * * * * *

"You remember, I have one hundred and sixty acres leased below the Tanner tract, that makes, with the option

and lease, six hundred (600) acres. This takes in all the described territory (that is easy to work) east of well No. 6. * * * * As I stated when you were here, the farm, four hundred and forty acres, is worth at least $15,000.00 without oil, and I am just fool enough to think that the oil is worth one million more.

"My option does not expire before the middle of December, but I want to call your attention to the fact, that the time is passing by, and after we see the result of No. 5, something must be done. I am confident that I can handle it with Denver parties, but as promised, I will give you first chance."

It is very evident that this letter referred, in speaking of the four hundred and forty (440) acres, to the Tanner tracts, that being the exact amount described in the Tanner option, and the letter shows quite conclusively, that Gumaer and Wallace had a talk about this identical tract and the option upon it when Wallace was in Colorado in July, at the time Gumaer was appointed the general manager of the company. Gumaer in his testimony further declares that the letter referred to the Tanner tract.

Exhibit 5, page 175, (folios 301-303) is a letter from Mr. Gumaer to Mr. Wallace, the president of the company, dated October 3rd, 1886; in it the following is found:

"I will make this proposition to the company: If you will sink one well immediately, one within a year, and three more within two and three years, I will give you the right to put the five wells on the one hundred and sixty (160) acres lease that belongs to me, at one-eighth (⅛) royalty, and in such payments as you may direct from time to time; however, this lease will not prohibit me from leasing or sinking other wells on said lease."

Another (Exhibit 5) is a telegram from Gumaer to Wallace, dated October 7th (folio 311), the body of the dispatch being on page 182; it reads:

"To Jacob Wallace, President, 304 Greenwood street, New York: Six down five hundred feet. Ignore my proposition third; make new one to-day.

(Signed) A. R. GUMAER, General Manager."

This dispatch clearly referred to the proposition contained in the letter of October 3d, just referred to.

Exhibit 6, folio 303, page 176, is a letter from Gumaer to Wallace, dated October 7th, 1886, containing the new proposition referred to in Gumaer's telegram of the same date. The letter is as follows:

"CAÑON CITY, Colo., October 7th, 1886.

JACOB WALLACE, ESQ., President.

"I wished you to ignore my proposition of the 3d and that see new one which I make, namely:

"If you will drill two wells on Tanner tract adjoining McCandless lease, say one in pumping distance from No. 6, and the other east side of said tracts, and commence derrick for three rig, I will give you forty (40) acres of the McCandless lease, all at one-eighth royalty; that is to say, the three wells' product and the forty acres, all for one-eighth royalty. You are not required to do any work on the forty acre tract; both leases are given for twenty years, or as long as oil is found in paying quantities. I think I can sink two wells besides No. 6, now sinking, within ninety days, and possibly in seventy days, unless we have some serious accident. Everything is working nicely now. You understand, these are lands I have held options on before I acted for the company. I consider this very valuable territory, and I cannot get you as favorable lease considering location from anyone; McCandless says positively that he will not lease balance of his Florence lands to anyone.

* * * * * * * * * *

"I think I could drill four wells about as soon as I could drill one on these lands, including building derrick and

drilling. Please wire me on receipt of this whether to go on with the work under the above proposed lease. The work must be pushed, as I want to get some oil from No. 7, and possibly No. 8, in present contract. I will get ready, so that work can be pushed rapidly upon hearing from you. Do not fail to wire. Yours truly,

A. R. GUMAER, General Manager."

To this letter of October 7th, on October 11th, about as soon as a letter could reach New York from Florence, Mr. Wallace sent the following dispatch in reply to Mr. Gumaer: It is Exhibit 13, folio 312; body of dispatch is top of page 183. It reads:

"A. R. GUMAER, G. M., Canon City, Colo.:

Without consulting trustees cannot consent to lease at more than one-tenth royalty.

Signed: JACOB WALLACE, President."

Upon October 12th, 1886, Mr. Wallace, the president of the company, wrote a letter to Mr. Gumaer. He commences the letter as follows:

"Your letter and telegrams received. The former I answered by wire, as requested. As soon as I hear from you, I will have a talk with the directors regarding the leases. I trust that you will be able to send us statement and Frazer leases very soon, etc."

(Folio 210.) (Being an Exhibit in the testimony of Mr. Wallace).

Upon October 12th, (Exhibit 12, folios 111, page 102), Mr. Gumaer telegraphed Mr. Wallace, the president of the company, as follows:

"I accept proposition, one-tenth; have commenced work."

The letter of October 12th, written by Wallace to Gumaer was evidently in response to the letter of Gumaer,

making the proposition of one-eighth. The telegram that Wallace sent stating that without consulting trustees he could not consent to lease at more than one-tenth royalty, is followed by the answer of Gumaer to that by telegram, that he accepted the proposition of one-tenth, and had commenced work.

There are other documents showing that Wallace had been given full information about the Tanner option when he was in Colorado in July.

In Exhibit 2, being a letter from Mr. Gumaer to Mr. Wallace, dated August 21st, 1886, this occurs:

"The party absolutely refuses to take less than $34,000, amount named in my option." (Folio 297.)

Immediately upon notification of Wallace by Gumaer, that he accepted the proposition of one-tenth royalty, and that he had commenced work, we find he is constantly giving information to Mr. Wallace by letter, of the progress of wells 8 and 9; that he then commenced to sink on the Tanner tract. Thus, in a letter from him to Wallace, dated October 27th, 1886, (Exhibit 7, folios 304 to 307,) he says:

"We can do nothing with No. 8 until we get engine; you note I say No. 8; No. 7 we have not completed the derrick as yet; you know we are obliged to have engines at every well."

And in same letter: "To make a long story short, enclosed herewith I hand you memorandas for wells No. 7, 8, 9 and 10; it is important you ship the first order called for on memoranda immediately, and the second order nearly as quick."

Again on November 22nd he writes to the president (Exhibit 8, folios 307 to 309, page 179): "If our No. 9 proves a good well this will open up considerable territory and the oil business will naturally branch into a very large business. In regard to the wells we are bound to put down, is No. 7 on Frazer's lease, and No. 8. We are now

also drilling No. 9 and No. 10. We completed derrick, but not obliged to sink for a long time."

Again in a letter to Wallace dated November 29th (Exhibit 10, page 181), he says: "The drilling of No. 8 was slow for about four days after we started in with the new cable, but is, I think, O. K. now. The drilling of this well was very much similar to that of Nos. 4 and 5; we are down about one thousand feet; no oil as yet."

On November 2nd, 1886, Wallace wires to Gumaer as follows: "Everything received; can get you material for 8 Denver; fear railroad delays; letter follows." (Exhibit 20, folio 322, page 189.)

Again November 3d Wallace wires Gumaer: "All right, buy material for 8's in Denver." (Exhibit 21, folio 323, page 190.)

Upon November 2nd, 1886, Mr. Wallace writes to Mr. Gumaer, (Exhibit 22, folio 324): "We received your letters, statements and vouchers, and regret to know that the engine had not yet at the time of writing arrived. In the event that you do not receive it by the time this reaches you, buy one in Denver and use it for the next well. We will immediately buy material for well No. 8, and instead of buying you a 1,600 foot cable, will buy it 1,800 or 2,000 feet. In regard to 7, 9 and 10 wells, will report on latter part of the week."

It was on October 6th, 1886, that Tanner executed his lease on the lands he had before that time contracted to sell to Gumaer, authorizing him to sink wells upon it; a copy of which lease is Exhibit 27, page 193.

Immediately upon notifying Wallace that his proposition to pay one-tenth royalty was accepted, work had been commenced, Mr. Gumaer executing the lease of the land to the company; it was of the same date with the telegram of acceptance of October 12th, 1886; it is set forth in full in the record on page 38, folios 65 to 68; by it the company agreed to pay to Gumaer the one-tenth part of the

oils and gases as royalty, and in it it refers direct to the lease from Tanner to Gumaer, and the company agreed to sink two wells and complete three derricks in strict accordance with Gumaer's proposition, in his letter to Wallace of October 7th.

It was when Isaiah Josephi came to Colorado that the new lease, dated December 20th, was made by Gumaer to the company, and as testified both by Mr. Wallace and Mr. Gumaer, it was done to make more secure the rights of the company in and to the wells they had sunk and commenced to sink, and the derricks erected upon it in pursuance of the agreement. That lease is set forth in full on page 40, folios 70 to 73, and is signed by A. R. Gumaer and the Colorado Oil Company by Isaiah Josephi, its vice president, and witnessed by Charles E. Waldo.

TESTIMONY OF MR. GUMAER, RESUMED.

The lease of October 12th, executed by Mr. Gumaer, was retained by him for the company as its general manager.

He was asked:

Q. 43. State why you retained possession, if you did so, of the lease which you executed to plaintiff October 12th, 1886?

A. I retained that lease together with three others, on account and expecting some one to be here from New York that represented the company, and to turn them over altogether. I also had all the other leases belonging to the company that they had prior to my management. (Folio 261)

Again he testifies (folio 261 and 262.)

Q. 45. In your letter marked Exhibit 2, in this examination, you use the following words: "I must get in shape to handle the 440 acres that I have option on." State what lands you refer to in the words above given?

A. I referred to the lands covered by the option given me by Mr. Tanner, dated December 10th, 1885, those being the lands that I went over with him while he was

here, and that I had shown in my option while he was here; and I promised to give him the first refusal of these lands whenever I got ready or in shape to make a proposition to anyone, this being the understanding when he was here. I think this letter opened the first correspondence in regard to the lands now in question.

In the following (question and answer 46) he testifies that the "34,000" he mentioned in Exhibit 2 referred to the option that was given him by Mr. Tanner, and that Mr. Wallace would know precisely what he meant, as he had talked the matter over with him when he was in Colorado.

Other questions and answers directly following throw further light upon the exact meaning of that letter.

He testifies (folio 267) that having accepted the proposition from Mr. Wallace of a one-tenth royalty, he immediately commenced work as general manager, and in behalf of appellee company to fulfill the requirements as agreed upon by Mr. Wallace, by commencement of the work in the erection of a derrick and the sinking of well No. 8, which was to be located in pumping distance from No. 6, and on the west side of the Tanner tract. Further, he testifies in this connection about keeping the company constantly informed of the progression of the work on the Tanner tract.

He further testifies (folio 268) about the Henderson lease, testified to by Mr. Henderson, which shows that the lands were not in the locality of the company's tract. That he was not prohibited from leasing lands away from them, and that when he accepted an assignment of the lease from Mr. Baker's wife, he paid the consideration in his own money.

He testifies (folio 269) that he did not state to Mr. Frazer or to anybody else that he had procured a lease from Mr. Tanner and the appellant company.

He further testifies (folio 281) that the lease of October 12th, from him to the company was written by Mr. Charles A. Morrison, on the day it bears date.

TESTIMONY OF SAMUEL H. BAKER.

The testimony of Samuel H. Baker, commencing on page 198, is substantially as follows:

That he was 32 years of age, an attorney at law, and knew the parties to the suit. He knew Mr. Gumaer for five years.

He testifies (folio 337) that he met Jacob Wallace, the president of the company, the latter part of June or the first of July, 1886, in Colorado. That he had several conversations with Mr. Wallace, and at the suggestion of Mr. Wallace, with Mr. Gumaer, on the subject of general manager, that he had suggested Mr. Gumaer's name in that connection. That Mr. Gumaer was cashier of the Exchange Bank and that in addition to fulfilling the duties of this office, he was owning and managing a large number of oil interests, which consisted of valuable leases and lands in fee simple, and lands under other rights which obliged him to protect his own interests, to sink several oil wells within a stipulated time; and that Mr. Gumaer was an energetic and able business man, but greatly feared that his private affairs would interfere with his acting as general manager of the company. That Mr. Wallace urged him to introduce him to Mr. Gumaer, and stated that while Mr. Gumaer should be the responsible man, and should receive whatever glory was attached to the position of manager, if he accepted, that he, Mr. Wallace, desired that Mr. Baker should assume partial charge of the business management of the company, while Mr. Gumaer would look after the financial interests; and that if he, Mr. Baker, would do that, Mr. Wallace would guarantee that he should receive a salary from the company of not less than $125.00 per month; that this arrangement was to be outside of any existing agreement to look after the local interests of the company in the lawsuits which were then imminent; that he introduced Mr. Wallace to Mr. Gumaer, and he stated

the purpose of the visit, leaving Mr. Wallace in Mr. Gumaer's cashier's room in the bank.

He further testifies (folio 339) that he conversed with Mr. Wallace from June 20th to the night of July 3rd, at various times. It appeared to be difficult to get Mr. Gumaer to act as general manager; that Mr. Wallace told him that Mr. Gumaer had explained to him about his, Mr. Gumaer's, connection with the Tanner lands, and he thinks that Mr. Gumaer's option on those lands was shown to Mr. Wallace, besides other leases and contracts Mr. Gumaer then had.

The witness then goes into detail of the leases he was instrumental with Mr. Gumaer in procuring for the company.

He testifies (folio 341) about the negotiations between Isaiah Josephi, vice president of the company, and Mr. Gumaer, which culminated the lease to the company of December 20th, 1886. He states that Mr. Josephi in the negotiations acted for the company.

The following questions and answers occurred:

Q. 8. State what was the purpose and object which the parties had in the execution of the lease mentioned in your last proceeding (the lease of December 20th, 1886)?

A. Mr. Gumaer, it was claimed, was too busy with his private affairs to look after the interests of the company longer. The company was designing to put Mr. S. A. Josephi in as general manager in his place. This lease was then drawn up for the purpose of adjusting a small difference between the company and Mr. Gumaer, and the lease was received by the company as a sort of compromise settlement.

Further testifying upon the same subject (folio 342) witness says: "I believe the lease itself states what tracts it was intended to secure. I know it does accurately state the amount of land that shall surround each well. I figured up the area of the circle which represents his interest in the

lease, and on which the well was to be the center. There was some talk that the appellant company should have made Mr. Gumaer assign the Tanner lease to them when he assumed the duties of general manager. It had just been found out that the Tanner lease was valuable, for I believe Mr. Gumaer had just struck oil in his first well. It was conceded by all parties that the company never had any actual interest in that lease, for Mr. Gumaer had been upon it nearly six months before he became general manager; but in order that Mr. Josephi might be satisfied, and especially in consideration of the company's waiving any interest in the Tanner lease, Mr. Gumaer consented to make this lease to the company, it being then expressly understood that the company acquired no further interests in the lands then upon the portions that were set apart upon which it was agreed that he should set wells."

He states further that at the time of the execution of the lease of December 20th, Mr. Josephi made no protest; that on the contrary, the settlement was made expressly to satisfy Mr. Isaiah Josephi, his brother, and Mr. Josephi expressed himself as being perfectly satisfied with the settlement made with Mr. Gumaer.

He further shows (folio 343) that Mr. Isaiah Josephi was there transacting a large amount of business for the company; that he compromised law suits; that he paid the money, between $6,000 and $7,000, through Mr. Waldo, which was received in settlement of the law suits by Mr. Peabody, and that he ordered the law suits dismissed, and that they were dismissed.

Upon cross-examination he testifies that he is not the attorney of Mr. Gumaer, nor connected in any way with him in business, and upon further cross-examination, reiterates and makes strong the testimony he gave in chief.

It was upon this testimony that the court rendered the decree complained of. The decree is as follows:

DECREE.

This cause came on to be heard at this term of the court and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows: That the certain indenture of lease heretofore executed and delivered by one Stephen J. Tanner to the defendant Agustus R. Gumaer, bearing date the 6th day of October, A. D. 1886, whereby the said Stephen J. Tanner granted and demised to said Agustus R. Gumaer those certain lands and premises situate at the said County of Fremont and known and described as the southeast quarter of section 15, the north half of the southwest quarter of section 15, the north half of the northeast quarter of section 22, the southwest quarter of the northeast quarter of section 22, about two and one-half acres of land in the southeast quarter of the southeast quarter of section 16, the same which was deeded from McCandless to Tanner, and twenty-four (24) acres of land lying and being in the northeast quarter of the northwest quarter of section 22, in township 19, south of range 69 west, excepting certain tracts, not to exceed twelve (12) acres in all, which before that time had been conveyed to McCandless, Smith, and Locke, lying within the said section 15, with the exclusive right to dig, bore, and mine for and gather all oil and gases, coal and rock, and all other valuable mineral substances found in solution or otherwise in and upon the said premises, for the term of twenty years from the date of the said indenture of lease, or so long as oil should be found in paying quantities, with a right of way to enter upon said premises for the purpose of operating, mining, or removing such oil and gases therefrom, and for laying pipes either under or upon the surface of said lands for the purpose of the transportation of said oil, and to erect all necessary buildings and tanks on the said premises for the purpose of procuring and storing said oils and gases, and with the right also to said Augustus R. Gumaer to appropriate to his own use all the oils and gases found upon the said premises during the said term, and with certain other conditions, provisos, and reservations therein contained, and which said indenture of lease was afterwards and on or about the 8th day of October, A. D. 1886, filed for record in the office of the recorder of the said

County of Fremont, and there recorded in book 28 thereof, at page 368 and the following pages of the said book of records, be by the said defendants within thirty days from the entry of this decree surrendered and delivered into the office of the clerk of this court for the use of the said complainant, together with an indenture of assignment duly executed and acknowledged by the said defendants respectively (said The Florence Oil Company subscribing and acknowledging the same by some proper officer of said company and affixing thereto its common seal), assigning, transferring, and setting over unto the said complainant the said indenture of lease, with all the estate, right, title, and interest whatsoever which by virtue thereof they, the said defendants, or either of them, have or at any time had in or to the lands and premises therein mentioned.

It is further ordered, adjudged, and decreed by the court that if the said defendants shall fail or neglect to deliver into the office of the clerk of this court within the time above limited the said indenture of lease, or in case they or either of them shall fail, refuse, or neglect to deliver into the office of the clerk of this court within the time above limited the deed of assignment of the said leasehold, as hereinbefore directed, they and each of them so defaulting shall be deemed and taken to be in contempt of this court, and the clerk of this court, who is hereby appointed commissioner for this purpose, may and shall, on application of the said complainant, in his own name execute an assignment of the said indenture of lease and the leasehold thereby let and demised and all rights, privileges and advantages which by virtue thereof the said defendants or either of them at any time had in or to the premises, rights, easements, and privileges or any thereof in the said indenture of lease mentioned, and that such assignment of the clerk in pursuance hereof shall be of the same effect as if signed, sealed, acknowledged, and delivered by the said defendants.

It is further ordered, adjudged, and decreed that the said defendants and each of them, their officers and servants, be from henceforth forever restrained and enjoined from encumbering the leasehold estate, rights, and privileges by the said indenture of lease granted or any thereof, and from obstructing, removing, using, or consuming from the said premises or any thereof, in the said indenture of

lease described, any oil, gas, metal, or mineral, whether found in solution or otherwise, and from intermeddling with the said premises or with the complainant's possession thereof, and from obstructing or interfering with plaintiff's possession and enjoyment of the wells thereon situate and in the bill of complaint mentioned, and from subverting, tearing down, or destroying the derricks erected at or over the said wells or either thereof, or the machinery, tools and implements of complainant thereat, and from molesting, assaulting, or maltreating the officers, agents, servants, or employes of the complainant at the said premises or in going to or from the same, or in possessing, operating, and enjoying the said premises or the rights and privileges by the said indenture of lease granted, or in extracting, removing, and taking to its own use the oils, gas, metals, or minerals found or *or* being in the lands in said first aforerecited indenture of lease described, whether in solution or otherwise, conformably to the said indenture of lease.

ARGUMENT.

The theory upon which the Court rendered the decree is that appellant occupied a fiduciary relation to the Colorado Oil Company, and that equity and good conscience required that whatever leases he secured during his employment, should be held to inure to the benefit of the company.

Not contesting the general proposition, for it is not necessary in this case, appellant contends that there was nothing whatever in his relations to the company that forbade him from dealing in whatever way he desired with the Tanner lands, and that whatever dealings he had with them, they could not be held to inure to the company's benefit.

If the decree of the court is right, it must be held as sound equity doctrine that:

First—Should A, who is conducting some such business as was appellee, employ B as his general manager, that whatever interest B had in lands at the time of his employment, similar to those of this company, must be held to belong to and to inure to A's benefit; or,

Second—In such a case, that B, having an actual contractual interest in lands believed to be valuable for oil at the time of his employment by A, B has no right to modify or change that contractual interest, and if he does, the new or modified relation that is created must immediately inure to the benefit of A; or,

Third—Applying the proposition to the case at bar, that although appellant had a valid, existing contract with Mr. Tanner for the lands in dispute, seven months before he was employed by the company, under which he might become the owner, or under which he would have the right to enter upon the lands to sink wells for oil and appropriate the oil to his own use, and within a stipulated time, pay an agreed price for the lands, he would not, after his employment by the company, have any right to make further or additional agreements concerning the land by which, in conjunction with his option of purchase, he would acquire a leasehold interest, covering a longer period of time than stipulated in the original contract, for the purpose of discovering, owning and vending oils therefrom; and that if he did acquire such extended or additional leasehold interest, such interest immediately inured to the benefit of the company of which he was made general manager.

I imagine that no such doctrine can be found in the books. Employment of one by the other, in the absence of stipulations to the contrary, cannot prevent the other from dealing as he will with that which is his own, or that in which he has an actual interest. What rule of equity is it that declares that because of Mr. Gumaer's employment as general manager by appellee, he could not protect himself in interests that he already possessed, or could not change or modify his contracts in relation to them that those interests might be the better subserved?

It seems very clear even though appellee might have been in ignorance of Mr. Gumaer's contract concerning the Tanner tracts, they could acquire no interests in it by

reason of Mr. Gumaer's extending, strengthening, or enlarging the right he already possessed in them. Had Mr. Gumaer commenced the sinking of wells for himself upon these lands under his original contract and its extension, and to vend the oils he discovered, the company could claim no interest in them. What is the difference between prospecting for oil under contract of option to purchase, and exploring for oil under a lease?

But it cannot be contended in view of the documentary evidence in the case, that appellee company, through its president, did not have full knowledge of the option that appellant had upon the Tanner tracts, or that, before he went to work upon it for appellee, he had not made a distinct proposition to them to lease the tract to them, for which they were to pay him a royalty of one-tenth of the oil product. The letters and telegrams to and from Mr. Gumaer and Mr. Wallace place these facts beyond cavil.

Nor can it be contended that when Mr. Gumaer executed the lease of December 20th to the company, it was not negotiated for and accepted by Mr Josephi, as the agent and vice president of the company, with full knowledge of the situation. At that time Mr. Josephi had full knowledge of the Tanner contract of December, 1885, and of the lease of October 12th, 1886, executed by Mr. Gumaer to the company; the lease of December 20th was made at his suggestion, in order that the company might have unquestioned property in the wells that had been sunk upon the Tanner tract, and the derrick that they had erected thereon, and all the oils they might obtain from the wells; for in that lease the several areas of lands surrounding the wells, and upon which the derricks set, were distinctly defined; and also the royalty of one-tenth to be given to Mr. Gumaer, as stated. It also distinctly recognizes the fact that that lease was executed subject to the terms and conditions of the lease of October 6th, that had been executed by Mr. Tanner to Mr. Gumaer.

True, Mr. Josephi says he accepted it under protest. This Mr. Baker distinctly denies, and asserts that it was made at his, Mr. Josephi's, earnest request; and also that it was made in consideration of the differences that arose between Mr. Gumaer and Mr. Josephi because of the indefinite descriptions contained in the lease of October 12th. It may be urged that Mr. Josephi had no authority to make this settlement, but nobody's eyes can be closed to the fact that Mr. Josephi came out to Colorado at that time upon the business of the company. He required Mr. Gumaer's resignation, which was tendered; he appointed his own brother general manager in his stead. He compromised at least two law suits; paid a large amount of money for the company upon the compromise, and ordered and procured the dismissal of the suits that were thus compromised. This was all done under the general authority he possessed. His own testimony declares that he was the largest stockholder in the company, and that he expected whatever he should determine upon the company would formally ratify.

If any question arises as to whether or not the negotiations between Mr. Gumaer and Mr. Josephi were of the most friendly character; or as to whether Mr. Josephi, at the time, believed that Mr. Gumaer had over-reached him, or attempted to over-reach him; or as to whether or not the lease of the 20th of December was executed under such circumstances, that Mr. Josephi unwillingly received it, or received it under protest; or had any question whatever about the good faith and the honest meaning of Mr. Gumaer, a letter that he wrote to Mr. Gumaer upon the 21st of December, the day following the execution of the lease, should put it at rest forever. The following is the letter. It is Exhibit 17, on page 185 of the printed record (folios 316 and 317):

"CANON CITY, COLO., Dec. 21, 1886.

A. R. GUMAER, Esq.

Dear Sir:—In accepting your resignation as general manager of the Colorado Oil Company for Colorado, I beg to express to you the regrets of the company and myself in losing your valuable services. You accepted the position when the company was in a precarious condition. Under your able management, its affairs to-day are in a much different condition, and prospects brighter than ever. I beg to express to you, for the company and myself, our thanks for the interest which you have taken in our affairs; and I beg to express the wish that our friendly relations may always continue.

With best wishes for your success, I am, sir, yours very truly,

ISAIAH JOSEPHI, Vice President."

One thing this letter shows, that is, that Mr. Josephi was acting for the company. It shows that he accepted Mr. Gumaer's resignation for the company, and he expressed to him the regrets of the company and himself in losing his valuable services. It is a testimonial also to Mr. Gumaer's energetic, able and honest management of the affairs of the company. The letter is not a perfunctory one. It is full of genuine good will. Certainly such a letter could not have been written after Mr. Josephi had been upon the ground for a considerable time; had examined into the condition of the company's property; had negotiated a lease for the company with Mr. Gumaer for options on the Tanner tract, unless Mr. Josephi for himself and for the company was thoroughly convinced of Mr. Gumaer's integrity and good faith in every way.

The decree of the court held the lease from Mr. Gumaer to the company of October 12th null and void. It held the lease of December 20th as of no account, and to be recog-

nized as a settlement of nothing. And further, it held that all of the rights acquired by Mr. Gumaer under his lease of the Tanner tract upon October 6th inured solely to the benefit of the company.

Mr. Gumaer's lease covered 360 acres of the 440 acres his option to purchase included. All of this 360 acres of land was held by the court to belong to appellee through the lease that Mr. Tanner executed to Mr. Gumaer. If the decree of the court is consistent, it practically destroys the rights that Mr. Gumaer held under his option of purchase; for surely he would not avail himself of his right, when another would have a superior right to his, though he acquired a fee simple title to it by virtue of the Tanner lease.

The truth about the matter seems to be, that after the settlement of December 20th, and the management of the company's affairs fell under Mr. S. A. Josephi, the company was induced to conclude that they might get possession of the entire Tanner tract through the suit that they commenced.

The testimony discloses another important fact that may be born in mind with profit. It is, that well No. 8, and the derrick at well No. 9, with well No. 10, are on the Tanner tract, and were the only wells that had been commenced upon the tract up to Mr. Gumaer's resignation as manager.

It is further clear that no work whatever was commenced upon either of these wells, or upon the derrick, until after the agreement made by letter and telegram of October 12th, and that thereupon Mr. Gumaer commenced work upon the Tanner tract under that agreement, and that he was in constant communication with the company about the work and its progress, and the tools, machinery and labor necessary to construct them. From the commencement of work by the company on the Tanner tract, until Mr. Gumaer's resignation, Mr. Wallace, the president of the company, had full knowledge that the work was being done for the company under the company's contract with

Mr. Gumaer, and under a contract by which they recognized him as the lessor.

Some confusion may arise out of the fact that these wells were sunk and the derrick raised upon the Tanner tract at the company's expense. This was the case with every lease that the company received, whether negotiated directly by itself or through Mr. Gumaer for them; and when the agreement was made that the correspondence discloses, upon October 12th, both appellant and appellee proceeded upon the theory, as it was in fact the work of the company under the lease given to it by Mr. Gumaer.

The general rule undoubtedly is that an agent undertaking any business for another, is disabled in equity from dealing in the matter of the agency upon his own account or for his own profit. But the disability does not attach until the fiduciary relation is established, nor does it preclude the right to dispose of prior acquisitions to the best advantage.

McElhenny vs. the Hubert Oil Co., 11, P. F. Smith, 188.

The Dinsmore Oil Co. vs. Dinsmore. 14 Id., 43, 50.

1 Leading Cases in Eq., p. 1 (Hare and Wallace's Notes), p. 67, 68.

Appellant should have recovered upon the further proposition that

"If the party originally possessing the remedial right has obtained full knowledge of all the material facts involved in the transaction, has become fully aware of its imperfections and of his own rights to impeach it, or ought, and might, with reasonable diligence have become so aware, and all undue influence is wholly removed, so that he can give a perfectly free consent, and he acts deliberately and with

the intention of ratifying the voidable transaction, then his confirmation is binding, and his remedial right, defensive or affirmative, is destroyed.

Chesterfield vs. Jaussen, 2 Ves. Sen. 125.
Cole vs. Gibson, 1 Ves. Sen. 503, 506.
Crowe vs. Ballard, 3 Bro. Ch. 117, 119.
Cole vs. Gibbons, 3 P. Wms. 290, 293.
Cann vs. Cann, Id., 723.
Dobson vs. Racey, 8 N. Y. 216.
Cumberland Coal Co., 20 Sherman, 20 Md. 117.
2 Pom. Eq. Jus. 3, 964.

When a party with full knowledge, or at least with sufficient notice or means of knowledge, of his rights, and of all the material facts, freely does what amounts to a recognition of the transaction as existing, or acts in a manner inconsistent with its repudiation, or lies by for a considerable time, and knowingly permits the other party to deal with the subject matter under the belief that the transaction recognized, or freely abstains for a considerable length of time from impeaching it, so that the other party is thereby reasonably induced to suppose that it is recognized, there is acquiescence, and the transaction, although originally impeachable becomes unimpeachable in equity.

Kerr on Fraud, 301, 302.
2 Pom. Eq. Jus. Sec. 965.
Randall vs. Errington, 10 Ves. 423, 426, 428.
Cholmondeley vs. Clinton, 2 Meriv. 121, 361.
And the many cases cited in Note 1, to Section 965 on page 500, 2 Pom. Eq. Jus.

In conclusion, appellant summarises his contentions:

First—His interest in the Tanner tract was secured many months before he was employed by appellee.

Second—That at the time of his employment, he was largely engaged in prospecting for oil, and securing leases upon oil lands of which his employer had full knowlege.

Third—That there was nothing in the nature of his employment that required him to abandon his interests, or to cease improving them, or to surrender any of them to his employer.

Fourth—That the company had full knowledge of his contractual relations with the Tanner tract, before and at the time of his employment.

Fifth—That whatever was the true relations of the parties about the land in controversy prior to December 20th, 1886, at that time they were all settled and compromised by the company through its vice president, Mr. Isaiah Josephi, and that the lease of that date was executed by appellant, and also by appellee through Mr. Isaiah Josephi, its vice president, in settlement of all doubtful questions, with full knowledge upon the part of the company of the true facts, and that that lease fixed and determined all the right of appellee in and to the Tanner tract. And that therefore the decree of the court is contrary to law, and against the weight of the evidence; and the decree should be reversed and the order made dismissing the [illegible] of complaint at the cost of appellee, and this appellant respectfully asks may be the order of the court herein.

Respectfully submitted,

THOMAS M. PATTERSON,

Solicitor for Appellant.

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IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

On Appeal from the Circuit Court of the United States for the District of Colorado.

AUGUST R. GUMAER,
Appellant,
vs.
THE COLORADO OIL COMPANY,
Appellee.

13911

BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

WELLS, McNEAL & TAYLOR.
Attorneys for Appellee.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

On Appeal from the Circuit Court of the United States for the District of Colorado.

AUGUST R. GUMAER, *Appellant,* vs. THE COLORADO OIL COMPANY, *Appellee.*	13911

BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

STATEMENT.

We are satisfied to adopt so much of the statement filed for appellant in this case as undertakes to state the pleadings and the contention of the par-

ties, as well as the number of witnesses who were called on both sides, but we desire to call the attention of the court to what we think are some very important portions of the testimony that do not appear in the brief filed by appellant, but which will be found upon the record at the places hereinafter indicated.

We do not think that the appellant fairly states the force of the testimony given by the witness Henderson. By reference to the record (folios 80, 81, 82), it will appear that Baker, who was acting as attorney for the oil company, and co-operating with and assisting Gumaer, and between whom and Gumaer it appeared that there was an entire community of knowledge, was obtaining the leases, and openly stated that they were, for the oil company, and was so dealing with Henderson. The pertinency of these statements will be apparent to the Court, because it appears from the testimony of the witness Henderson that a number of persons were trying to obtain these leasehold rights, and Gumaer and Baker were successful in securing the leases only by reason of the credit obtained by means of their connection or avowed connection with the oil company. This very fully appears in the cross-examination of the witness Henderson, at folio 85, where it appears that Baker, who was trying to get these leases, extolled the character of the company as well as its business, and instanced the making of other leases to it as an inducement

to Henderson to execute the one he gave. It is very apparent from the general tenor of Henderson's testimony that both Gumaer and Baker were using the company's credit, and the fact of its having procured other leases, as the prime inducement to have these papers signed. Among these was the lease from Frazer.

Frazer's testimony is found commencing at folio 89 of the abstract. When Frazer's lease was obtained, which it appeared preceded the Henderson lease, Baker was introduced to Frazer by Gumaer, who told the witness that he was manager for the oil company, and stated that they had obtained leases for the company; that Peabody, the former agent, had been getting leases on speculation, and they named Tanner and McCandless as persons who made leases to the company through them. This question is asked:

> "Q Did they tell you upon what terms they had gotten Tanner and others, and wanted to get your land on the same terms?
>
> "A They claimed all on the same terms, all on one-twelfth. Yes, they did."

And on cross-examination (folio 91) he said: "I think they had leased Mr. Tanner's land. They told of what they had leased. I feel pretty positive they said it." The attempt to lessen the force of Frazer's testimony by reference to his age and forgetfulness as to some matters will disappear when his whole testimony is read, and it will be perfectly

apparent just what sort of representations and statements both Gumaer and Baker were making in order to obtain these leases, and that everywhere throughout the testimony they were obtaining them upon the credit of the company. And at folio 96 the witness says that the statement about the Tanner lease was made when his first lease was signed. It is true a change was made in that lease, but it was only for the purpose of correcting some informalities.

The same criticism may, with even more force, be made as to the testimony of LeFevre. Counsel for appellant undertakes to say that the pertinent part of it is that which relates to the conversation between Wallace and Gumaer in reference to the Tanner lease. In this respect we must differ with him, as our contention is that the testimony of the witness was extremely important on another and very vital branch of this case, and that was that Gumaer took charge in June, 1886, and at that time there were only three pumping wells owned by the company—two on the Lobach farm, one on the McCandless farm. That under the Gumaer management wells 5 and 6 were sunk on the McCandless farm, well No. 8 on the Tanner farm, well No. 7 on the Frazer farm, and well No. 9 started on the Tanner farm; that there were no wells being sunk on the Tanner farm at the time Gumaer went into the management of the company. At folio 98 of the record he says, that as foreman of the company he

had charge of sinking well No. 8, and all the expenses of it were borne by the oil company, as the vouchers were all in its name; that the cost of sinking the well with machinery and implements amounted to about $8,000; that a derrick was erected on No. 9, and 400 or 500 feet of drilling done. All the cost of the work on No. 9 at the time Mr. Gumaer quit amounted to about $1,200, and this was paid by the oil company. The witness also says at folio 99 that Wallace visited the property in July, 1886, and this question was asked him:

"Q Did you ever hear any conversation between Mr. Wallace and Mr. Gumaer after Mr. Gumaer went in with reference to the renewal or obtaining leases for the company; if so, state the conversation, and when and where it occurred? A I did hear such conversation. It was one day we were going from well No. 4 to Florence. It was some time before Mr. Wallace went back, some time in July, 1886. Mr. Wallace told Mr. Gumaer something about holding the Lobach lease and something about getting a lease from Tanner.

"Q What answer did Mr. Gumaer make to that? A I couldn't say as to what the answer was. He didn't seem to feel—that is, he didn't seem to think much of the Lobach, but he seemed to favor the Tanner lease.

"Q In that conversation did you hear Mr. Gumaer make a claim of any rights in the Tanner land? A I did not.

"Q Did you have any conversation with Mr. Gumaer when well No. 8 was located, at or about that time, as to why he was planting the well on the Tanner land? A Yes; he was down there and located it. He said the company had got a lease, and wanted to get a well down as soon as they could, and the place he indicated was on the Tanner land.

"Q Did or did not Mr. Gumaer at that time state that the company had a lease of the land on which No. 8 was being located? A He spoke it in that way. He did not come out and say that it was Tanner's land; he said that the company had a lease of the land where the well was located."

And in folio 100 the witness went on to say that Tanner himself assisted in the location of well No. 10, and in the discussion there was something said about the lines. Tanner said there was no trouble about the line; the well was on their lease, on the Colorado Oil company's lease. Mr. Josephi asked him how the line ran (folio 100). He told him, and then Mr. Josephi asked him how it was Mr. Gumaer had a well on it. Said he didn't know; that was Mr. Josephi's lookout. He had leased the ground to the Colorado Oil company, and they could do as they were a mind to with it, and the witness says that in May, 1887, Gumaer came on to the ground and tore down and took away the derricks at well No. 10. The testimony of the witness Lucas is found substantially in folio 117. His

dealings were mainly with Baker, to whom he leased eighty acres. There were some changes in the lease, and when they came to Baker's office the next day to sign it he said that there were some changes in it that he wished to make, because Gumaer thought it was too much—that is, the forfeit money. At the time Baker claimed to be acting for the Colorado Oil company. On the 17th of October, 1887, the witness went to the Exchange bank and told Gumaer that he would like to get the lease. Gumaer took the lease and wrote a relinquishment on it and gave it to him. On cross-examination he says he had no conversation with Gumaer at the time of the making of the lease.

The testimony of Simeon Josephi, commencing at folio 119, is perhaps the most important testimony in the case. He commenced as general manager of the company on the 20th of December, 1886. He succeeded appellant and is acquainted with appellant and also with Baker. The conversation held between his brother Isiah Josephi and the appellant is fairly stated by counsel for appellant in his statement of the case, but there is very much more of his testimony extremely important in arriving at an accurate idea of the situation of the parties that is not so clearly referred to by counsel for appellant. Witness had a number of conversations with Tanner in which Tanner said to him (folio 121) that when he gave the lease to Gumaer he knew him to be general manager of the

company, and believed that the company would carry out its conditions of the lease. That Gumaer had an option on the land before, and had some lumber and was pretending that he was going to work. That this was only a blind when he gave the other lease to Gumaer, he, Gumaer, agreed to pay off some mortgages that were on the land and this was embodied in the lease, but he always supposed that the lease would revert to the company, as he did not see how a man could use the company's money except in fulfilling the lease and then except to hold himself. Gumaer told Tanner, so Tanner said to witness, that Baker had put in forty or eighty acres more than the lessor intended to be included. After that conversation Gumaer proceeded to put down a well on the two and one-half acre tract that is mentioned in the controversy. Witness called on Tanner in reference to this and asked him if he had given Gumaer permission to put a well down: He replied that he had not. Gumaer had come to him with the paper for him to sign, which he refused. That he afterwards saw the paper with his name signed to it, and accused Gumaer of forging the paper, who tore it up, threw it on the floor and put his foot on it. Tanner also advised witness not to fulfil the conditions of the lease with reference to well 9. Said that if the conditions of the lease were not complied with he would declare the lease forfeited and make a new one direct to the company. Witness went with

LeFevre and Tanner to locate number 10 derrick. Tanner requested that the location be made on the land that he was not farming. He asked me under what lease we were operating; I told him on the lease that Gumaer had given. He was acting as our manager, and asked me if the location was within the lease, and on that lease, and he told me, that every well that Gumaer had put in place was on land that had never been leased. In another conversation he told me that Gumaer had struck oil on the two and one-half acres tract and was putting it into condition. He volunteered the remark that Mr. Gumaer was the most unscrupulous scoundrel in Fremont county. Witness also showed an acknowledgment from Gumaer that the company had complied with the terms of the lease. It was executed on the date that it bears. All these statements stand connected with appellant by the other testimony in the case. It was drawn up by Mr. Augustus Macon. Macon was attorney for the company at the time and also for Tanner. A few days prior to May 13, Macon agreed that Tanner should make no disposition of that land until my return from Denver. Afterwards I was informed that Gumaer had bought the Tanner place, and calling Macon to account for it he said there was no compulsion on Tanner, nothing except his word. In folio 124 the witness says that in putting in the derrick on number 10 he was attempting to comply with the terms of the lease

in controversy and was prevented in operating it by the action of Gumaer, who with a force of men demolished the derrick on Sunday the 1st day of May, 1887. At folio 134 the witness says that well number 8 is in the possession of the plaintiff company, and has been so, so far as he knows and it is now, producing oil in paying quantities. The testimony of Isiah Josephi begins at folio 162. The witness was vice-president and trustee of the Colorado Oil company and has been so since October, 1885. Had no instructions to go to Colorado, but while there and being largely interested and the largest of any of the stockholders in the said oil company, he visited the ground. Became satisfied that there was need for a different manager and requested Mr. Gumaer to resign. At folios 163-4 the witness was asked this question: "Do you recollect having received from the said Gumaer while at Canon City on the occasion above inquired of, certain leases by him granted to the Colorado Oil company authorizing the extraction of oil from certain premises? If yea, state whether at that time any of the officers or directors of said company except yourself were aware, to your knowledge, of a lease which had before that time been granted by Stephen J. Tanner to said Gumaer for a large tract of land, including those described in the leases granted by Gumaer to the Colorado Oil company? A I do remember receiving, under protest, certain lease from Mr. Gumaer of certain Tanner lands, but to my knowledge

no other trustee or officer of the Colorado Oil company was cognizant of the fact that Mr. Gumaer had taken a lease from Mr. Tanner in his own name and I had had no knowledge of his having taken such a lease until my arrival in Canon City." And the witness says he does not know of any representation made by Gumaer to Wallace in respect of the Tanner lease, or in respect of whether the lease could be procured on said land from said Tanner. The witness says at folio 165 that when he returned to New York and stated what had been done in regard to Gumaer, and that he had taken the lease under protest that the well number 8 was on the property and the derricks for other wells, all of which had been purchased directed and done at the company's expense. the trustees declined to receive the lease and had instructed the manager to bring suit for the recovery of the original lease from Tanner to Gumaer. In cross-examination, at folio 166, he says that he visited Colorado on his own business and his visit to the seat of operations of the oil company was incidental. Testimony of the witness Wallace as found following folio 175. Witness was in Colorado looking after the interests of the company; met Gumaer and with the concurrence of the trustees appointed him general manager. Gumaer became general manager of the company with complete knowledge of what his duties were, with fair promises to push developments and the company's

success rapidly. I took a great deal of pains to explain fully and in detail every point regarding the condition of the company's affairs, and the probabilities and possibilities of its success. It was known that Mr. Gumaer was not a practical oil man, but there was a foreman capable of doing this part of the work, and Mr. Gumaer promised to keep a supervision over it and see that the work was economically and honestly done, and to look after the general interests of the company and all other duties. I regard him as an exceedingly active and energetic man. He was instructed to take general charge of the company's affairs and business in the State of Colorado. Full instructions were given him, and very urgent ones, to at once secure as much more territory by lease as possible in or around our then proved-up oil territory. That it would be very important to secure for the oil company an extension of the Lobach lease with an additional acreage if possible. To secure leases on the Frazier, Tanner and McCandless lands. In fact, all that belt of land lying between the town and the river, below and above, as I regarded it all as good; also stated to him that part of these lands had been promised to the company, and if he thought I had better remain and secure them I would. He said he would give it all his attention; that witness need not worry about it. Witness knew that Gumaer had had some interest at the time. Referring to the McCandless lands he told witness that

if the company would put down a well and comply with the lease that he, Gumaer, would let him have it, the whole of the 160 acres. Witness says at folio 178 that he was not advised either at or before the employment of Gumaer that he had contracted with Tanner or claimed to have done so for any interest in the land in controversy. Between the 25th of June and the 5th of July had several conversations with Gumaer. Some in Fremont county and some in Pueblo. In these conversations talked with Gumaer with regard to the Tanner land as well as the other lands belonging and adjoining the company's lands. In these conversations Gumaer said that Tanner had the land mortgaged, and wanted to sell it and pay off the mortgage, and when the witness and Gumaer were talking of getting leases Mr. Gumaer said the Tanner ground is good ground to have but we cannot get it; that he could get an option on it from some one, without mentioning the persons name, that person had an option on it for $34,000. That the ground was good ground and the company ought to buy it. Witness does not remember any reply, as the company was not buying, but leasing lands. Either at that or some other time he said Tanner could not make a lease of it as it would interfere with the selling of it. He led witness to believe that the company could buy the ground at any time, but could not get a lease. At folios 179-180 the witness was asked the following interrogatory: "Had you at the time of

the employment of the said Gumaer or the corporation complainant expressly agreed or in any manner consented that said Gumaer might procure from said Tanner a lease to himself of any land in the vicinity of the company's property in Fremont county, and hold the same for himself individually and not for the company? A I did not nor did the corporation, either direct or by implication, ever give any such consent, but, on the contrary, on more than one occasion directly the opposite was stated, and the whole tenor of the instructions given were to secure leases on the Tanner land and other lands on this side of the river between Florence and the river for the Colorado Oil company. At folio 181 witness says that Gumaer knew that Baker was the attorney for the corporation before the 6th of October, because Baker went over and introduced the witness to Gumaer. This was in June, 1886, and this matter was spoken of several times between Gumaer and witness prior to October, 1886. Witness told Gumaer that Baker was the attorney for the company and aided him in getting leases and some of Waldo & Baker's bills for services rendered on behalf of the company passed through Gumaer's hands as general manager of the company in 1886. At folio 181 he says that after Gumaer was elected general manager he was given a copy of the by-laws and power of attorney. And that power of attorney, though requested of Gumaer, has not been returned. At folio 183 he says that as

president of the board of directors and the board of managers of the company he first became aware of the execution of the two leases from Gumaer to the company on the 12th of October and the 20th of December, sometime in January, 1887. That Josephi had no authority whatever nor had any other person instructions or directions from the corporation or from its managing officers to make or accept such leases, nor were those arrangements ever ratified or approved or accepted by the corporation. At folio 185 he says that the tools, machinery, materials, funds and labor expended, used on wells 8, 9 and 10 were the property of the Colorado Oil company and were used by the defendant Gumaer under his general directions and instructions to take care of the property of the company and of its interests, and procure leases for the oil territory of the company, and not under any special direction or permission given for that purpose. That it was not known to witness or to the corporation or to any officers of the company so far as witness has any knowledge that Gumaer claimed to have owned a lease on the Tanner land which he sub-leased to the corporation on land as expressed in the lease of October 12th and December 20th, until some time in the month of January, 1887. Witness knew that Gumaer was putting down wells 8, 9 and 10; did not know that he had obtained a lease from Tanner to put down these wells which he intended to lease or sub-lease to the company. Nor did he

know of this until Mr. Isiah Josephi returned to New York after his visit to Colorado. At folio 187 he said Gumaer was made general manager with a salary of $250 a month. In getting Mr. Gumaer he was trying to get a responsible and active, energetic, good and pushing man, and that as Gumaer was cashier of the Exchange bank of Canon City he presumed him to be a man in whom the company could put its trust. That witness confided to him fully the affairs of the company, showed him the necessity of procuring leases at once, and urged upon him his prompt action in regard to this matter, especially lands in proximity to the then proved-up and developed lease of McCandless land. Witness recollects particularly being with Gumaer at wells 3 and 4 on McCandless land; 5 was not started, nor were any of the higher numbered wells started. They walked up to Florence, and LeFevre was with them. During this walk witness instructed Gumaer to get a more extensive lease from Lobach, and an extension on the lease the company then had from him. It was also urged if possible to get a lease on the Tanner and Frazier lands and an additional lease from McCandless. He was told that the company ought to have the strip between the town and the river. If it was necessary for witness to remain a few days to secure these leases, he would do so. That he wanted the Frazier, McCandless and Tanner lands. That Frazier and McCandless had promised all he wanted.

That Gumaer said we ought to have all that land, and he would give it all his attention, and he would secure several wells from both McCandless and Frazier and the state lease. He had instructions to secure the lease offered Tanner, if possible. On cross-examination, at folio 190, he says he was introduced to Gumaer by Baker, one of the company's counsel, and on a visit he stayed in Colorado fifteen or twenty days. He knew no one; he was a total stranger in the county and state and knew no one whom he could entrust the company's interests, and this led to the introduction of Gumaer and his appointment. Witness did not employ him, he simply arranged with him to accept the office, and afterwards, on his recommendation the company made the appointment. Instructions were all oral while witness was in Colorado, and afterwards communications were in writing. At folio 201 witness says that after being introduced to Gumaer he went fully into the condition of the company and told him how the former manager had been taking care of things. Witness was not aware of the fact that Gumaer was interested in oil wells or that he had had any experience in oil wells or that he had made any ventures in Fremont county prior to that time other than the McCandless matter. Nor was the employment made because he was regarded as an experienced man in the oil business. At folio 206 he says he did receive a telegram from Gumaer on the 15th of October, but has never yet

understood the proposition as contained in the letter of the 7th. That he did not investigate the matter or look into it closely as the telegram mentioned as having been sent after the receipt of the letter was one of common occurrence and not referred to in any of the correspondence. Gumaer was in full charge and authorized to take leases for the company.

He never sent to the New York office or to witness the original of the copy of the lease based upon any such proposition as he claims had been agreed to to have been made by him in his letter of October 7th. Gumaer's letter of the 7th is difficult to understand. It may have two meanings, one just as consistent as the other.

Witness did not understand the letter when he first received it; does not understand now what Gumaer meant by it in relation to the Tanner land. Consequently the telegram of the 11th was not intended as a proposition in any way, but as a general direction, or information made as manager of the company, that the company would not take any oil wells at one-eighth royalty. Nor was the subject of these leases referred to after the telegram of the 11th of October. That in the letter of the 12th, reference was made to the communications of October 7th, and in answer to the telegram of the 11th, in which Gumaer reports progress of certain wells, and it was not an answer to the telegram of the 12th, for this was a night message, and not re-

ceived until the morning of the 18th. At folio 209 he says he received the telegram, and also the letter of the 3rd. The proposition speaks for itself. It does not in any manner refer to the Tanner lands, but it is the lease of 160 acres he claims to have had from McCandless prior to his accepting the post.

These were all the witnesses offered by the plaintiff.

It will be noticed that the only reference by name to Tanner lands is found in Exhibit 3 and the only references in terms and not in name to the Tanner lands is found in Exhibits 2 and 4. The reference in Exhibit 3 is as follows, folio 219: "If you drill two wells on Tanner tract adjoining McCandless' lease, say one in pumping distance for No. 6, and the other on east side of said tract, and commence derrick for third rig, I will give you 40 acres, all at one-eighth royalty—that is to say the three wells (production) and the 40 acres all to be one-eighth royalty." To that letter the president of the company responded by telegram which is found at folio 312 and is of date October 11, 1886, "Without consulting trustees cannot consent to lease at more than one-tenth royalty." In Exhibit 2, at folio 219, Gumaer writes: "If we get a good well out of No. 5 I must set it in shape to handle the 440 acres that I have an option on. The party absolutely refuses to take less than 34,000, the amount named in my option." It is attempted on

these two, by reason of the statement of the witness Wallace, that Gumaer had said to him that some one had an option on the Tanner land at $34,000, that by intendment he ought to have understood in Gumaer's correspondence that this was the same property. At folio 222, at the bottom of Exhibit No. 4, Gumaer writes: "Kindly write me your views in regard to sinking on my lease, as I want to commence another derrick, No. 8, immediately." And it appears from the undisputed testimony on all sides that No. 8 is on the Tanner land.

Now, without regard to what may be the testimony preserved in the record as having been introduced by the defendant below, we take the position that on the facts as they are disclosed by the complainant's case, fairly summed up, the following facts were made to appear:

1. That the company had been doing business in the neighborhood of the Tanner property for sometime prior to Gumaer's employment.

2. That at the time Gumaer was made general manager he was fully advised in that regard and that the duty imposed upon him was not only to take care of the company's interests in general, but to especially exert himself to procure leases on all the adjacent territory valuable for oil properties that could be obtained.

3. That none of the officers of the company knew at that time or had any information of, or

that put them on inquiry that Gumaer had been in the oil business or had procured any other leases, except that he held a lease on the McCandless land and had been paying $20 a month to preserve it, rather than put down a well.

4. That he was introduced to the president by Baker whom he knew was attorney for the company and that he and Baker did procure a number of leases in their own names and in the names of their relatives to the property adjacent to the Tanner ground upon the faith and credit of the company.

5. That all of the money used in sinking the wells, erecting derricks, and making improvements on the Tanner property was money of the company and was used under the direction and expended under the management of Gumaer.

6. That at the time he executed the lease of the 12th of October from himself to the company, he was at that time general manager. Had done no work on the Tanner land at all, and did not report the fact that the lease was made from him to the company, thus leaving it to the company to fairly and justly presume that the Tanner lease to which he referred in his correspondence was a lease directly from Tanner to the company, thus making it possible for the company to have all these improvements and betterments made at its own expense on land that the general manager of the company held, and for which the company was

to pay him a profit beyond his salary as an officer of the company.

7. That the compromise arrangement by which Isaiah Josephi undertook to adjust the matter giving possession to the company was never ratified by the company, but was promptly disapproved and the demand made of Gumaer to transfer the property, and his failing to do so resulted in this litigation.

8. The fair inference from all the testimony is, that although Gumaer had some sort of a contract with Tanner concerning this property prior to his appointment as general manager, that that option expired and was rendered void after he became manager by means of a paper signed in his favor by Tanner, and that that paper was only procured by reason of the fact that he was the manager of the oil company and on its credit.

9. That to permit the holding by Gumaer would be to place him in a position necessarily hostile to the interest of his company, and make him the recipient of a continuing profit out of the company.

ARGUMENT.

It seemed to us in the trial below that the court could not have well reached any other conclusion than the one it did reach—that is to say, that at the time this lease from Tanner to Gumaer was procured, that he, Gumaer, was drawing upon

the credit to which he was entitled by virtue of his official connection with the complainant company, and that but for this he could not have secured the arrangement with Tanner; that whether purposely or not, he concealed from the officers of the company the fact of his negotiations with Tanner and the previous relations existing between them.

It is not fair to presume that the officers of this company would have permitted their general manager to use their credit in the neighborhood to procure leases in his own name, and thereby enable him, by making a lease from himself to the company, to obtain an undue advantage and undue profit out of his employment.

It seems that appellant's counsel does not controvert the general theory of law upon which the court predicated its ruling in this case, but contends the facts did not justify the application of this principle in the case at bar, and in order to distinguish this case from the general class that is governed by this rule, he undertakes to make an exception in favor of appellant by invoking the fact that he, appellant, had procured an option on this land more than seven months before he went into the employ of the complainant, and that it would be inequitable and unjust, by reason of that fact alone, to compel him because of the after employment to lose the benefit of his previous arrangement.

On our part we insist that nowhere in the case

can a legitimate bottom be found upon which to base this contention of appellant. It is perfectly apparent that when he became manager of the company, he did not disclose any intention on his part to hold out the Tanner land, or even to become the medium through which a transfer from Tanner to the company could be made, but everywhere, and at all times he is treating with the officers of the company as though the Tanner land was open for procurement; is advising with them about the benefit to be derived from getting a lease of it, and of the difficulties that lie in the way of it. He is fully advised of the desire of the company to procure all the lands adjacent to those properties upon which profitable wells had already been sunk, and the advantage to the company of controlling as much similarly situated land as can be obtained. Yet during all these conversations, as before stated, he nowhere intimates that his holding, if he had any, is a factor in these negotiations. Take the situation as it was at the time that the president was in Colorado an entire stranger, and putting the appellant into the important position where so much trust was necessarily imposed in him, and test whatever follows by the fair obligations imposed by the law upon the complainant, and let us see where he stood when he undertook to make this lease of the 12th of October from himself to the company.

Nothing had been done to improve the Tanner

lands. The company, through its officers at that time, supposed it to be outstanding and in the market, and the subject matter of negotiation for leases. The officers were all in New York. The appellant was on the ground, charged with the duty of taking care of all the interests of the company, and as a marked incident to that duty to procure all the lands that were reachable. He makes an arrangement with Tanner, which concededly he does not in terms make known to the company. There are negotiations both by letter and by wire with reference to the Tanner land, and about the making of a lease of the same, and the amount of royalty that is to be paid. Would it be for one moment contended that the officers of the company in New York were not entirely justified in supposing that the lease of the Tanner land about which they were corresponding with appellant was one directly from Tanner to the company, and not that they were leasing from their own manager? We insist that every rule of fair action and fair dealing between principal and agent, between master and employee, will justify us in our position, that the officers of the company had a perfect right to assume, without more, that they were leasing from Tanner, and not from Gumaer.

Suppose we discard every implication of bad faith, and merely place this on the ground of mistake between the parties, still we insist the rule is the same, but we think, both in the court below and

here, the conclusion is irresistible, that Gumaer was trying to overreach and obtain an inequitable and unlawful profit out of the company. Nowhere in the record does it appear that he reported to the company that he had made a lease to it in his own name. Is this concealment accidental, or is it intentional? The result to the company is just the same. It furnishes to Gumaer a large amount of money, variously estimated from $7,500 to $10,000, with which to improve this property, sink wells on it, put permanent and valuable improvements on it, and through these improvements to establish, as they did establish, that oil was to be found in paying quantities, and yet they find themselves in the attitude of being lessees of their own manager, and giving to him an advantage which he could not have procured except by means of concealing the fact that the lease was not made in its original terms from Tanner to the company, and that it contained provisions as between Gumaer and the company wholly inconsistent with the relationship that existed between them at the time it was made.

We cannot for one moment agree with counsel for appellant in his contention as found on page 50 of his printed brief, that the officers of complainant company had full knowledge of the option that Gumaer had upon the Tanner tracts, or that, before he went to work upon it for the company, he had made a distinct proposition to them to lease

the tract for which they were to pay him a royalty of one-tenth of the oil product, because upon this point we invoke the careful attention of the Court to just what did occur in that correspondence, and in the light of the attitude of the parties, their means of information, we again insist that the only fair understanding that the officers of the company could possibly have of what was in the mind of all parties in that correspondence was, that they were getting this lease directly from Tanner as they were getting them from all of the other persons from whom leaseholds were taken.

But, again, it is contended that the company is bound by the action of Mr. Josephi in making the lease of Dec. 20; and equally again, we say that this contention will not help the appellant because when the arrangement was made Mr. Josephi protested against the demand made by Gumaer, and when he reported the fact of what had been done to the company, and took the lease, it was promptly and immediately repudiated by the company, and this suit instituted to declare Gumaer a trustee of the leasehold. In dealing with Josephi, Gumaer knew very well his position in the company. He had already seen that Mr. Wallace would not appoint him manager without first having submitted his recommendation to the board, and the burden lay upon Gumaer at the time that the lease was made, especially when he knew, as he well did, that he was undertaking to make an illegitimate and un-

lawful gain out of his position as manager, to see to it that Josephi's authority was absolute to make the arrangement.

In this connection it will not do for counsel for the appellant to take comfort out of Mr. Baker's testimony, because we very much doubt whether the court, after inspecting this record, will give much weight to any evidence given by Mr. Baker in the case. His position was certainly not an enviable one, for it is fairly uncontradicted upon the record that he was co-operating with Gumaer in all of the methods by which they were both undertaking to use the company's credit to obtain leases of these lands directly to themselves, despite the fact they well knew the officers of the company supposed that they were faithfully attempting to get all the property possible for the company direct.

We are somewhat surprised at the pointed manner in which counsel for appellant, at page 53 of his brief, refers to the fact that wells 8, 9 and 10, all on the Tanner tract, were commenced under Gumaer's management and under the agreement of October 12th. How this can be of the slightest comfort to appellant, or bolster his claim to this property, is beyond us, for it seemed to us that the bare fact that he would make a lease of this kind to the company and preserve it concealed among his papers, and thereafter go on expending the money of the company in bettering these proper-

ties and proving them up, and then plead these facts as a justification of his position, almost seems to us like giving up the case.

BRIEF.

We can do no better, so far as a citation of authorities is concerned, than to adopt the references made by appellant's counsel on the main point in the case. With commendable industry he has brought to the attention of the court many authorities bearing upon the proposition invoked by us in the court below, and the only difficulty that he must encounter is the applicability of this law to his side of the case.

One of the earliest cases illustrating the application of this rule was Bulkley v. Wilford (2 Cl. and Fin. 177, 8 Bligh, New Series, 11). In that case Lord Eldon used the following language: "You have been wanting in what I conceive to be the duty of an attorney. If it happens that you get an advantage by that neglect, you shall not hold that advantage, but you shall be trustee of the property for the benefit of that person who would have been entitled to it. If you had known what, as an attorney you ought to have known, and not knowing it you shall not take advantage of your own ignorance.

In the same line are Nanney v. Williams, 22 Beav. Mix v. King, 55 Ill., 434.

In the well known Rumfort Market case, (Seldon's Chanc. cases, 61) it appears that the trustee, finding some old leases among the assets of the trust estate, renewed them in his own name, even after the lessor had refused to renew them for the benefit of the *cestui que trust*. It was declared by the court that he was a constructive trustee for the benefit of the trust estate for, as it was said by the Court, a trustee should be under no temptation to make any contracts in relation to the trust property even collaterally, on his own private account, and this rule extends to all persons who have even only a partial interest in property. They shall not take advantage of their situation to renew leases in their own names, as tenants for life, mortgagees, partners and the like. In Owen v. Williams (Amb. 734) it was held that if instead of renewing such leases, the trustee or other persons sell the right to renew, for money, they must account to the *cestui que trust* for the price. In Edwards v. Lewis, (3 Atk. 538) this rule was in terms applied to an agent acting for the trustee. It is said that the rule against purchasing by trustees of the *cestui que trust* amounts almost to a prohibition, for if the trustee purchases the property, and sells it at a profit, he must account for it as a trustee, not because there was any fraud in the transaction, but because it is against the policy of the law to allow such transactions.

John v. Bennett, 39 Barb. 237.

Kent v. Chalfant, 7 Minn., 487.

Provest v. Gratts, 6 Wheat, 481.
Kandlin v. Davis, 81 Kenn., 34.

Nor is it material that there should be an advantage or profit. It is enough to show the relation and the purchase. The trustee can make no profit from his management of the estate, and is bound not to put himself in any position where his private interest may conflict with the interest of the trust estate.

Campbell v. Walker, 5 Ves., 678.
Morse v. Royal, 12 Ves., 355.

Such tranctions are fraudulent *per se.*
Nelson v. Hoyvner, 66 Ill., 487.

The broad principle of equity in all these matters is, that persons clothed with a fiduciary character are not permitted to use their positions or functions so as to obtain any advantage or profit inconsistent with their duty to the beneficiary.

Fox v. McReth, 2 Brown's Ch., 400.

It has been held, that if one purchase property immediately connected with the trust estate, so that the independent ownership of it will seriously affect the use and value of the trust property, he cannot retain the same for his benefit, but must hold it upon a resulting trust for his beneficiary.

Settembrel vs. Putnam, 30 Cal. 420.
Hall vs. Vanness, 49 Pa. 457.
Shaw vs. Shaw, 86 Mo. 594.

The principle underlying all of these authorities is, that the temptation of self interest is too powerful to be trusted, and the right of the trustee to put himself in a position where his private profit will oppose the interest of the trust estate is always and everywhere denied.

Russell vs. Paten, 4 Brad. (Ill.) 481.

We are almost inclined to tender an apology for citing authorities on these propositions, so well established and so elementary in character, that it would seem no controversy could possibly arise over the doctrine.

We have felt, and still feel, that the whole case must necessarily turn upon the sufficiency of the proof to establish such a relation and such a state of facts as will make the transaction fall within the inhibition of the law; but since all transactions of this character must depend more upon what equity well terms "badges of fraud" than by any series of facts upon which the court can lay its hand, we have offered these general, well known and well settled doctrines of equity as affording a better argument in favor of supporting the lower court in its holding than we can otherwise offer, that this was one of the cases where, both upon principle and authority, it appeared that the agent was using his position for the purpose of taking to himself an undue advantage.

Certainly, if it be true that the rule is so rigid that every transaction, the result of which is to put

the trust officer in a position inconsistent with his trust relation, will be treated as a breach of the necessary obligation incurred, and such person declared a trustee, then we submit that we have unquestionably brought the appellant in this case clearly and necessarily within the purview of that rule, and that when the court declared that he held the Tanner lease for the benefit of the appellee in this case, it did no more than the bare necessities of the case required.

All of which is respectfully submitted.

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IN THE

SUPREME COURT

OF THE UNITED STATES.

On Appeal from the Circuit Court of the United States for the District of Colorado.

AUGUSTUS R GUMAER, *Appellant,*
vs.
THE COLORADO OIL COMPANY, *Appellee.* } 13,911.

Reply to Brief and Argument of Appellee.

THOMAS M. PATTERSON,
Attorney for Appellant.

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13,911.

REPLY TO BRIEF AND ARGUMENT OF APPELLEE.

The points made by appellee's attorney will be noticed seriatim:

They first refer (p. 3 of brief) to witness Frazier's testimony. He shows that appellant was negotiating with him for a lease of his land for the company. This is true. Appellant's own testimony shows that he leased some 4,000 acres for it; yet the Tanner tract is the only one over which controversy arose. An examination of the witnesses' testi-

mony will show that as to whether or not the Tanner land was spoken of to him by Gumaer at all was only an impression. As: "I *think* they had leased Mr. Tanner's land. They told of what they had leased. I *feel pretty positive* they had said it." I concur with appellee's counsel that the witnesses' testimony be scanned in full by the court. It will be found that it is very indefinite and unimportant.

They next refer to the testimony of LeFevre. They say the important part of his testimony is that which shows that when appellant took charge of this company's affairs there were but three pumping wells on its lands, and that no well was being sunk on the Tanner lands until after he took charge. This point is important for appellant. It shows that he commenced no wells on the Tanner tract until after his negotiations by mail and wire with the company, and had closed the arrangement of leasing part of the Tanner land to the company at one-tenth royalty. Then he commenced the Tanner wells. He commenced them as the manager of the company under the lease to them. Necessarily the company ultimately paid for sinking them. They were their wells under a lease from Gumaer to them. negotiated between them by mail and wire. In his correspondence with the company thereafter he always spoke of them as the company's wells and not as his own. He could not have done otherwise.

They quote five questions and answers from LeFevre's testimony (pp. 5 and 6). The substance of them is that Wallace and Gumaer talked about the Tanner land in July, This Gumaer states is true; the difference in their testimony being that LeFevre says he thought Wallace said something about getting a lease on the Tanner land and that Gumaer favored it, and he heard Gumaer make no claim of right in the Tanner land. The witness, at the time he testified, was an employe of the company, nevertheless his recollection of the conversation is more indefinite than was Frazer's of his. He said "Wallace told Gumaer *something* about holding the

Lobach lease, and *something* about getting a lease from Tanner." Testifying about Gumaer's answer he says: "I could'nt say as to what the answer was. He did'nt *seem to feel*—that is *he did'nt seem* to think much of the Lobach, but he *seemed* to favor the Tanner lease."

What is there in all such testimony? The witness gives no language, he is not definite about a single word. Recollecting that he was in the employment of the company, such testimony should have no weight.

His testimony (p. 6) about some talk by Gumaer about the land No. 8 was located upon, though it is much more definite than any other talk he gives, is quite corroborative of Gumaer's testimony. Referring to Gumaer's conversation about No. 8, he says: "He did not come out and say it was Tanner's land; he said the company had a lease of the land where the well was located." So it had. That has been appellant's contention from the first. The company had a lease—it was Gumaer's lease to the company.

Appellee's attorneys recited pages of Simeon Josephi's testimony. The bulk of it is talk he professes to have had with Tanner not in Gumaer's hearing. Pages 7 to 9 give talks with Tanner when Gumaer was not present, and though counsel says these statements by Tanner are connected with appellant, there is no such connection, and counsel wholly fail to point our where it is.

It is pertinent to recall the fact, that appellee, while giving a great deal of what Tanner said through Josephi, all of which was in Gumaer's absence, they declined to call Tanner as a witness. Appellant placed Tanner on the stand on his own behalf, to prove the option, lease, and bona fidas of his dealings with him. In one short sentence he contradicted all that Josephi said he had told him about Gumaer. He said that he made the lease to Gumaer in good faith and to him personally, and never heard the company's name in connection with it. Appellee's attorney declined to cross-examine him.

On page 9 is an extract from Simeon Josephi's testimony in which he recites a conversation with Macon. There is no pretense that Gumaer was present or that he was connected with it.

On page 9 they quote from Josephi about the purchase of the Tanner tract by Gumaer. This he purchased after the lease of December 20, and before suit brought. It shows that he relied upon that lease as a settlement, and acted in good faith upon it.

They quote from Isaiah Josephi's testimony (p. 10) to show that what he did in executing the lease of December 20 was without authority from the company. The court cannot well reach any other conclusion than that witness was in Colorado with plenary power from the company. All he did was in the company's name, and he did a great deal of business while there for it. There is no pretense that any record disavowal of the lease of December 20 was made. All the court has upon the point of want of authority and disavowal is witness' statement. Are not the lease signed by him as vice-president of the company, and months of acquiescence in it before suit brought weightier evidence than his mere word that he had no authority, and that his act was at once disavowed? There is no claim that Gumaer was notified of the disavowal of which witness speaks. If there was any pretense of action of that kind there was no record made of it.

Copious quotations from Wallace's testimony are next given. The most important part is his testimony about Gumaer's letters and telegrams. He says (p. 18 of brief) he didn't understand that letter of October 7 when he first received it, and he did not understand when he testified what Gumaer meant by it in relation to the Tanner land. This is sheer evasion, if not falsehood. He dared not put any other construction upon the letter than as contended for by appellant. So he pleads ignorance—always the last refuge of a detected falsifier.

Appellee's attorneys say (p. 19) that the only reference to the Tanner land by name is in Exhibit 3, (folio 298). This is a great mistake, for it is again referred to by name in Gumaer's letter of October 7. (Rec. Ex. 6, p. 176), the one in which he made his proposition to the company, and which it accepted in telegram of October 11, provided the royalty was placed at ten per cent. (Ex. 13, fol. 312.)

The conclusions as to the facts made to appear by appellee's testimony are not sound.

Attention is called to subdivisions 3, (p. 20) 6, (p. 21) 7 and 8 (p. 22). Wallace's own testimony shows that he was in and about Canon City, where Gumaer was doing business, some three weeks. Canon City is a small town—not more than 1,500 to 2,000 inhabitants. There was no hindrance to the making of enquiries by Wallace; they were in the immediate neighborhood of the oil fields. It was impossible, unless he closed his ears, to remain in ignorance of Gumaer's connection with, and interest in oil lands. His testimony (Record folio 178-180) shows that he and Gumaer conversed frequently and exhaustively about lands and oil and the prospects. Wallace's testimony at folio 201 is significant. It was while negotiating with Gumaer before his employment. He says: "I told him (Gumaer) that things were going wrong, and gave him a few instances in detail. He immediately volunteered his assistance in helping me to find out quite a number of things which opened my eyes wider as to how things were going on the company's matters than I had previously seen and seemed to be disposed to see that I should have fair play, although a stranger."

The fact that Wallace was at Canon City twenty days where Gumaer lived, that he enquired about him, that he employed him after fullest opportunity to learn all about him in a small town, is a strong testimonial of good character for appellant.

They say that the proof shows that at the time of his

employment he had done no work on the Tanner tract. On the contrary, it shows that he had put in the foundation for a derrick and hauled the material for the derrick upon the ground, and stopped only because there was no market for crude oil and it was necessary to arrange for a refinery before a well was sunk.

It does not appear that the adjustment made by Isaiah Josephi was never ratified. Nor did it need ratification. There is no record or other thing except Isaiah's word to show that what he did needed ratification.

What counsel means by saying Gumaer's option had expired or was rendered void after he became manager by reason of a paper signed in his favor by Tanner, appellant's attorney cannot comprehend. Nothing in the record sustains the statement.

The argument of appellee's attorneys is all based upon the case as alone made by their own testimony. To illustrate, they take it as conceded that when Gumaer was employed nothing was said by Gumaer about the Tanner tract. On the contrary, Gumaer testifies that he made known to Wallace the exact status, and the correspondence between Gumaer and Wallace later when the arrangement for the lease was made, can be reconciled upon no other state of facts. Gumaer's letters could not have been written except with the understanding by him that Wallace knew all about the subject.

They say (p. 26) "nowhere in the record does it appear that he reported to the company that he had made a lease to it in his own name. Is this concealment accidental or is it intentional?" The lease of October 12, 1886, expressly recites Tanner's prior lease to him, and the lease of December 20, signed for the company by Isaiah Josephi, refers to it in the fullest terms—leaving no room whatever to doubt his fullest knowledge of it by the company.

They insist that Mr. Josephi in making the lease of December 20 protested against it. The only testimony to support this claim is Mr. Josephi's own statement. This is

not only overcome by Mr. Gumaer's and Mr. Baker's testimony, but is overwhelmingly contradicted by the letter which Josephi gave to Gumaer the following day, December 21, which is set forth in full in appellant's former brief.

What is meant by executing that lease of December 20 "under protest?" There was no duress. There was no emergency. Gumaer had conducted the business of the company to its utmost satisfaction; so the vice president said December 21, and nothing appears to contradict it; on the contrary, everything supports the statement. Is not this "under protest" claim another invention to avoid the force and effect of the lease? What legal or equitable virtue is there in "under protest" in a case like this? It is not at all like the payment of taxes under protest to save sale of property, and the like. It is meaningless; and has surely been invented. That any protest was made is contradicted by every undeniable fact in the case.

We have deemed it sufficient to briefly review the testimony particularily cited by appellee. It has only shown that the substance of the case was fully and fairly set forth in appellant's former brief. The authorities they cite do not impair in any way the two main propositions relied upon by appellant. The new cases they cite are not at all applicable to the facts of this case.

Respectfully submitted,

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Attorney for Appellant.